TO REAUTHORIZE THE HAZARDOUS MATERIALS TRANSPORTATION ACT THROUGH FISCAL YEAR 1997

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(103-19)

To Reauthorize the Hazardous Materi...

HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 2178

TO AMEND THE HAZARDOUS MATERIALS TRANSPORTATION ACT TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEARS 1994, 1995, 1996, AND 1997

JUNE 8, 1993

Printed for the use of the
Committee on Public Works and Transportation

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TO REAUTHORIZE THE HAZARDOUS MATERIALS TRANSPORTATION ACT THROUGH FISCAL YEAR 1997

TUESDAY, JUNE 8, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Nick J. Rahall II (chairman of the subcommittee) presiding.

Mr. RAHALL. Good morning. The Subcommittee on Surface Transportation will come to order, please.

The subcommittee is meeting this morning to hold a hearing on H.R. 2178, to reauthorize the Hazardous Materials Transportation Act through fiscal year 1997. As I stated when introducing this measure, in light of the fact that Congress just 3 years ago passed the first major rewrite of the Hazardous Materials Transportation Act of 1975, this bill contains no provisions other than providing for the necessary budget authority for the HAZMAT program. However, this issue, which was hotly debated during the last reauthorization that is being revisited today, involves whether or not a centralized computer tracking system for all hazardous materials in transportation should be required.

Under such a system, shippers would enter information about hazardous material into a central computerized data center at both the commencement and completion of each shipment. In the event of an incident, this information would be immediately available to police and fire fighters.

Unresolved at the time, the 1990 act called on the National Academy of Sciences to study the matter and issue a report to the Congress. This study has been completed, and today we will receive testimony on it as well as a number of relevant issues.

Before recognizing the witnesses, I will recognize the gentleman from Wisconsin, Mr. Petri, the Ranking Republican Member.

Mr. PETRI. Thank you, Mr. Chairman.

This morning, as you have noted, the subcommittee will review the Hazardous Materials Transportation Act last reauthorized in 1990. Those revisions were quite comprehensive and many new initiatives are still in the rulemaking stage. So we don't seem to be facing the prospect of major revisions to the Act this time around.

There are some issues, though, which will receive particular attention at this hearing, including the recently completed study by

the Transportation Research Board regarding the establishment of a national computerized tracking system of hazardous materials shipments.

And our colleague, who is about to testify, Doug Applegate, has been particularly active on this issue for many years. I am happy he will be sharing his views with us this morning.

One other issue I would like to mention is the recent controversy over the classification of edible oils as hazardous materials. Last month I joined over 50 other House Members in writing the Department of Transportation to express concerns regarding this proposal, which has developed as a result of the Oil Pollution Act of 1990, and requires that oil spill prevention and response plans be prepared for shipments of oil in bulk packaging. I look forward to any comments by the Department of Transportation regarding the future treatment of animal fats and vegetable oils.

I would like to join you, Mr. Chairman, in welcoming the witnesses who will appear before the subcommittee this morning, and ask unanimous consent that a statement by the Ranking Republican member of the full committee, Bud Shuster, be included in the record at this point.

Mr. RAHALL. Without objection.

[Mr. Shuster's prepared statement follows:]

STATEMENT OF THE HONORABLE BUD SHUSTER

Thank you, Mr. Chairman. I look forward to this hearing on an important issue: the safe transportation of hazardous materials.

In 1990, this Committee helped enact the most comprehensive overhaul of the Hazardous Materials Transportation Act since its enactment in 1975. We will spend much of today reviewing how the important new initiatives in that legislation are being implemented and whether any changes need to be made to further improve its effectiveness.

Hazardous materials affect virtually every sector of our economy and our personal lives. Products range from acids and compressed gases used in manufacturing and refining processes to common consumer products, such as home cleaning solutions and paint. Over 1.5 billion tons of hazardous materials are transported annually throughout our country via over 500,000 shipments each day.

The safety record of hazardous materials transportation remains very good considering the tremendous volume of shipments. In 1992, there were only 16 fatalities and 99 injuries resulting from 274 accidents, according to DOT estimates of reported incidents. We should continue to look for any cost-effective ways of improving on that record.

I welcome our witnesses here today, including our distinguished colleague on the committee, Congressman Doug Applegate, and thank each of them for appearing before us to help us in our efforts to enhance the safety of our roads, rails, waterways and skies.

Mr. RAHALL. Before we proceed, I would like to include in the record at this point statements received from Chair Mineta, Mr. Costello, and Mr. Poshard.

[Statements referred to follow:]

STATEMENT OF CHAIR NORMAN Y. MINETA

Today, the Subcommittee on Surface Transportation begins hearings for authorizing funds for the Department of Transportation to implement the Hazardous Materials Transportation Act for fiscal years 1994 through 1997. I want to commend Chairman Rahall for scheduling these hearings and I intend to work with him to see that the bill is completed in an expeditious and successful manner.

The Congress last dealt with this matter in 1990, when it completed the most comprehensive revision of the Act since it was enacted in 1974. That revision known as the Hazardous Materials Transportation Uniform Safety Act of 1990 made many

important regulatory changes, many of them in the area of training. The provisions of those 1990 amendments are in various stages of implementation.

I look forward to hearing the views of the Subcommittee's witnesses on whether the 1990 Act is achieving the goals that were set by it and whether or not any substantial revisions of the Act are needed and warranted. I am particularly interested in hearing about those provisions in the 1990 law that dealt with training and data collection.

Again, I want to thank Chairman Rahall for holding these hearings, and I look forward to hearing the testimony of our witnesses.

STATEMENT OF HON. JERRY F. COSTELLO

Mr. Chairman, I want to thank you for calling today's hearing on the Reauthorization of the Hazardous Materials Transportation Act for fiscal years 1994, 1995, 1996 and 1997. We will hear testimony concerning the program for hazardous materials transportation and the implementation of the Hazardous Materials Transportation Uniform Safety Act, passed in 1990.

In addition to determining the appropriate authorization levels, the Committee will review the registration program, from which the fees are used to fund training and planning for public sector employees who are responsible for emergency response operations, and the progress of the 1990 mandated working group. This working group is comprised of state and local officials to establish uniform forms and procedures to be used by states to register the shipping and transportation of hazardous materials by motor carrier.

I welcome the witnesses who will testify today and look forward to their remarks. Again, Mr. Chairman, thank you for leadership on this issue.

STATEMENT OF HON. GLENN POSHARD

Mr. Chairman and Members of the subcommittee, I am pleased to be here this morning to receive testimony from the panel members regarding the transportation of hazardous waste materials.

There is no way we can be competitive without a safe and modern transportation system. And it is our responsibility to ensure that, to every extent possible, we in Congress promulgate laws that address the questions of highway safety and the transportation of hazardous materials. I am interested in hearing from the regulatory agencies as well as those who are involved in the business of shipping hazardous materials.

Thank you, Mr. Chairman, for holding this hearing.

Mr. RAHALL. The Chair recognizes the gentleman from New Jersey, Mr. Franks?

Mr. FRANKS. Mr. Chairman, I ask unanimous consent to place a statement in the record.

Mr. RAHALL. Without objection, so ordered.

[Mr. Franks' prepared statement follows:]

STATEMENT OF HON. BOB FRANKS

Mr. Chairman, I am pleased that the Surface Transportation Subcommittee is holding a hearing today on H.R. 2178, a bill to reauthorize the Hazardous Materials Transportation Act (HMTA) through fiscal year 1997. I commend Chairman Mineta, Ranking Minority Member Shuster, Mr. Rahall, and Mr. Petri for introducing this important legislation.

Mr. Chairman, although the HMTA contains many fine and necessary provisions, I would like to bring to my colleagues' attention an interim final rule proposed by the U.S. Department of Transportation's Research and Special Programs Administration (RSPA) that was issued under the authority of HMTA. This rule concerns the bulk transportation of previously unregulated oils, and requires carriers affected by the rule to prepare and maintain oil spill response plans. This rule, if finalized, would have the effect of classifying vegetable and animal oils used in most foods as a "hazardous material." Such a rule would boost consumer prices, add million of dollars to business costs, and not benefit the environment. This rule would subject food oils to the same restrictions as petroleum or fuel oil. This is absurd.

Mr. Chairman, this is a perfect example of bureaucracy over-reaching and overstretching the intentions of Congress. The law of unintended consequences is at

work here. Certainly Congress did not intend for peanut oil, salad oil, corn oil, olive oil and other edible oils to have the same stigma as PCBs and formaldehyde.

Mr. Chairman, this rule will cost jobs at a time when this nation can least afford to lose any more. For example, Hudson Tank Terminals of Newark, New Jersey, estimates that this rule will require the hiring of another 3 employees just to keep track of the paperwork, and will cost this small company $5 million in compliance costs. I believe that instead of heaping inane regulation upon inane regulation on small business, the federal government should be looking for ways to cut red tape and help small business.

Mr. Chairman, should this rule go into effect, I will introduce legislation to immediately repeal it. I am hopeful that RSPA will recognize the absurdity of this rule before Congress is forced to act. I suggest to RSPA that instead of treating edible oils as hazardous, a more apt classification would be a new category called "Regulated, Non-Hazardous." However, I believe the best course of action would be for RSPA to drop this whole ridiculous business and concentrate on real hazardous wastes. We already have enough pointless, job-destroying regulations in this country.

Thank you for your consideration.

Mr. RAHALL. I would like to insert into the record at this point letters sent to the Secretary of Transportation by several members of Congress regarding the removal of vegetable oils and animal fats from the classification of hazardous materials.

[Letters referred to follow:]

JILL LONG, M.C.
4TH DISTRICT, INDIANA

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June 8, 1993

The Honorable Nick Joe Rahall, II
Chairman, Public Works
Subcommittee On Surface
Transportation
B376 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, several Members of Congress -- you included -- have expressed to Secretary of Transportation Pena our concern that the Department of Transportation remove vegetable oils and animal fats from the classification of hazardous materials in the proposed interim final rule (Docket No. HM-214, Amendment Nos. 171-119, 172-232, 176-32).

We commend you on your decision to hold a hearing on H.R. 2178, legislation to reauthorize for four years the Hazardous Materials Transportation Act and we look forward to assisting you in this effort in any appropriate manner.

We respectfully request that the two letters to Secretary Pena of April 2 and May 26 be included in the hearing record.

Thank you for your concern regarding this matter.

Sincerely,

JILL LONG
Member of Congress

SAM COPPERSMITH
Member of Congress

AGRICULTURE COMMITTEE
VETERANS' AFFAIRS COMMITTEE
SELECT COMMITTEE ON HUNGER

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April 2, 1993

The Honorable Federico Pena
Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590

Dear Mr. Secretary:

We are writing to express our concern with the proposed interim final rule that would include edible and inedible vegetable oil and animal oil in the same class as hazardous materials (Docket No. HM-214, Amendment Nos. 171-119, 172-232, 176-32). These materials are not hazardous, and the classification of them as such would create, in our view, serious problems for farmers, consumers, agribusiness, and government agencies. Recognizing that the vegetable and animal oil industry has a responsibility to prevent and clean up spills when they occur, we nevertheless believe there is no sound reason to designate these edible products as hazardous. We therefore urge the Department of Transportation to develop thoughtful and fair rules to govern potential spills of edible oil products that are separate from those governing hazardous materials. To the extent future spill rules are needed for the food industry, we urge the Department to develope appropriate food product rules that are separate from those governing hazardous materials.

The reasons for our recommendations are:

-- These products do not exhibit hazardous characteristics: they are not corrosive, flammable, combustible, toxic, explosive, or radioactive and they should not be regulated as such.

-- Vegetable oils and animal fats do not cause significant environmental harm when spilled, and certainly cause no greater harm than spills of other food products such as molasses or vinegar. Moreover, the vast majority of

spills of vegetable and animal oils occur at loading and unloading points, which are already adequately covered under Spill Response Rules administered by the Coast Guard and EPA.

-- Classifying edible products as hazardous would create interagency conflicts. The Food and Drug Administration gives these products GRAS -- Generally Regarded As Safe -- status. The USDA, EPA, DOE, and other agencies are working to develop environmentally safe fuels and products based on vegetable and animal oils. Moreover, a hazardous materials classification for vegetable oils and animal fats would interfere with the implementation of the Sanitary Food Transportation Act, which is also administered by the DOT.

-- The proposed approach would erode the value of the hazardous materials regulations by designating as hazardous materials substances that are not hazardous.

-- Classifying these materials as hazardous will impose significant compliance costs on farmers, consumers, and the transportation, food processing, and related agribusiness community with little or no benefit to the environment or to human health and safety.

We strongly urge DOT to remove vegetable oils and animal fats from the classification of hazardous materials. Should the regulations as proposed not be amended to reflect the concerns raised in this letter, we urge you to extend the deadline for comments and hold a public hearing on this important issue.

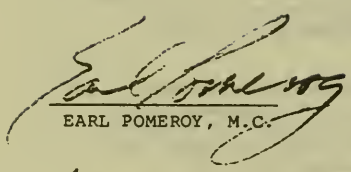
Sincerely,

EVA M. CLAYTON, M.C.

JILL L. LONG, M.C.

GLENN ENGLISH, M.C.

TIM JOHNSON, M.C.



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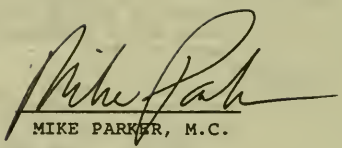
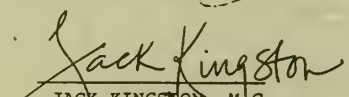
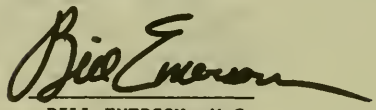


MIKE PARKER, M.C.



JACK KINGSTON, M.C.



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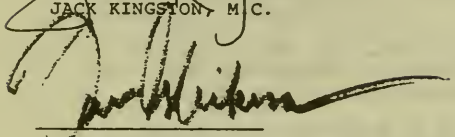

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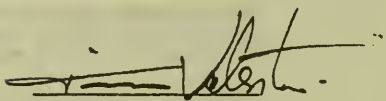

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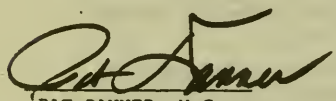
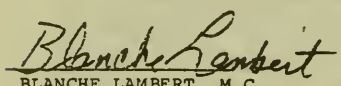


PAT DANNER, M.C.

FRANK MCCLOSKEY, M.C.



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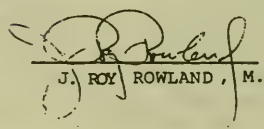

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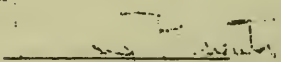

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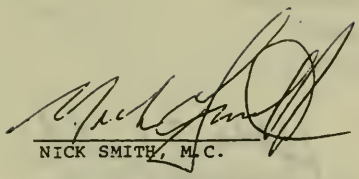
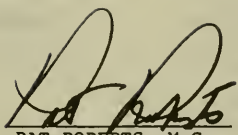


NICK SMITH, M.C.



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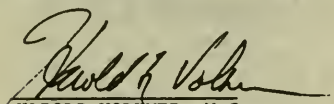

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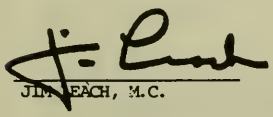

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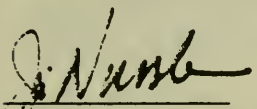

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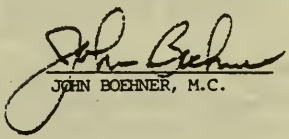

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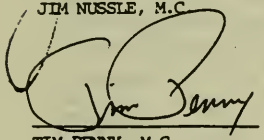

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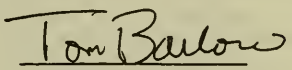

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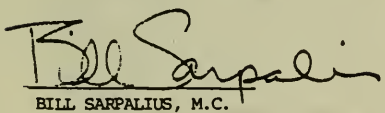

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Congress of the United States
House of Representatives
Washington, D.C. 20515

May 26, 1993

The Honorable Federico Pena
Secretary of Transportation
Mr. Alan L. Roberts
Associate Administrator
for Hazardous Materials Safety
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Gentlemen:

As you know, on April 2, 1993, 30 Members of Congress requested the removal of vegetable oils and animal fats from the classification of hazardous materials. The Members also asked that the comment period be extended and that a public hearing be held on this issue. We appreciate the Department's prompt response to those concerns, and the decision hold a public hearing and extend the period for comments.

We write today to formally comment for the record with regard to the Oil Spill Prevention and Response Plans (58 Fed. Reg. 6864-6872). We strongly urge that the Research and Special Programs Agency (RSPA) develop an alternative means of addressing environmental concerns without classifying animal fats and vegetable oils as hazardous materials. We do so for several reasons. First, animal fats and vegetable oils are not hazardous materials, and labeling them as such serves no environmental purpose. Second, labeling these edible products as hazardous could have an adverse effect on consumers, who may not differentiate between environmental hazards and health hazards. Since these products are contained in many processed food products, such concerns could have important repercussions for food manufacturers. Third, classifying these products as hazardous would raise the cost to consumers of numerous food products, again with no justifiable environmental benefits. Fourth, designating these products as hazardous would mean a vast increase in the number of shipments regulated by the Department, without any measurable benefit to health, safety or the environment.

We urge you to work closely with animal fats and vegetable oils industry to develop a workable alternative that will satisfy the Department's objectives of protecting our environment, while avoiding costly, unnecessary and onerous regulations.

In advance, thank you for your serious consideration of our views in this regard.

Sincerely,

JILL LONG
Member of Congress

STEVE GUNDERSON
Member of Congress

IKE SKELTON
Member of Congress

TOM EWING
Member of Congress

TIM PENNY
Member of Congress

DOUG BEREUTER
Member of Congress

DAVE OBEY
Member of Congress

JOHN BOEHNER
Member of Congress

JAMIE WHITTEN
Member of Congress

JIM LEACH
Member of Congress

TIM JOHNSON
Member of Congress

JACK KINGSTON
Member of Congress

HOWARD COBLE
Member of Congress

FRANK MCCLOSKEY
Member of Congress

TIM HOLDEN
Member of Congress

TOM BARLOW
Member of Congress

MIKE OXLEY
Member of Congress

JAMES CLYBURN
Member of Congress

BILL EMERSON
Member of Congress

BILL BARRETT
Member of Congress

PAT DANNER
Member of Congress

BILLY TAUZIN
Member of Congress

JIMMY HAYES
Member of Congress

RICHARD BAKER
Member of Congress

SONNY G.V. MONTGOMERY
Member of Congress

JIM RAMSTAD
Member of Congress

DAN GLICKMAN
Member of Congress

BILL SARPALIUS
Member of Congress

CAL DOOLEY
Member of Congress

DAVID MINGE
Member of Congress

JAMES WALSH
Member of Congress

THOMAS PETRI
Member of Congress

BILL GOODLATTE
Member of Congress

COLLIN PETERSON
Member of Congress

MARCY KAPTUR
Member of Congress

CHARLES CANADY
Member of Congress

THOMAS MANTON
Member of Congress

NICK SMITH
Member of Congress

E. (KIKA) DE LA GARZA
Member of Congress

JIM NUSSLE
Member of Congress

EDOLPHUS TOWNS
Member of Congress

HARRIS FAWELL
Member of Congress

GARY FRANKS
Member of Congress

JAN MEYERS
Member of Congress

NICK JOE RAHALL
Member of Congress

RALPH HALL
Member of Congress

SCOTT KLUG
Member of Congress

RON PACKARD
Member of Congress

JENNY HASTERT
Member of Congress

PETE GEREN
Member of Congress

MIKE PARKER
Member of Congress

JIM CHAPMAN
Member of Congress

JIM SLATTERY
Member of Congress

ROSCOE BARTLETT
Member of Congress

TIM VALENTINE
Member of Congress

Mr. RAHALL. Before beginning with witnesses, the Chair would ask unanimous consent that all witnesses' prepared statements will appear in the record in their entirety. Witnesses are encouraged to summarize.

At this point, we recognize a distinguished Member of both the subcommittee and our full committee, distinguished also by the fact that he is in my class, the 1985 class. We came to the Congress together. Representative Applegate first introduced hazardous materials transportation legislation several years back in response to an incident in his State in which information was not available for a long period of time.

Doug, you have been a real leader on this issue. We appreciate that. And we appreciate your being with us this morning as our lead-off witness. The Representative from Ohio, Doug Applegate.

TESTIMONY OF HON. DOUGLAS APPLEGATE, A REPRESENTATIVE IN CONGRESS FROM OHIO

Mr. APPLEGATE. Thank you very much, Mr. Chairman and Members of the committee.

I do want to commend you for holding hearings on the reauthorization bill. It is extremely important. The law has proved to be somewhat important since 1974, when first instigated, and effective in controlling and regulating all modes of transporting commodities of a hazardous nature. But as good as this law has been, with the creation of hundreds of hazardous materials every year, it is clear that the law must be reauthorized in order that society be protected from any improper handling or transportation of hazardous materials.

There are a lot of areas in this that will be debated, but I would like to bring to your attention one particular area that has been a major of concern of mine for several years. Language was adopted in the Hazardous Materials Transportation Uniform Act of 1990 calling on the National Academy of Sciences "to conduct a study of the feasibility and necessity of a central reporting system and computerized telecommunications data center that is capable of receiving, storing and retrieving data concerning all daily shipments of hazardous materials, and that can provide information to facilitate responses to incidents involving the transportation of hazardous materials," unquote.

The study was as a result of legislation that I introduced in the 101st Congress, which was H.R. 2584, and that outlined the details of a centralized data reporting system, as was described by NAS. Let me point out that in 1974—this is 20 years ago—Congress passed the original Hazardous Materials Transportation Act that included language that called in fact for a centralized reporting system to oversee the shipments. No action was taken until 1980, when an agreement was reached between the U.S. Department of Transportation and the Chemical Manufacturers Association, and they established what is called CHEMTREK. So basically it is the chemical companies that do the tracking. It is sort of like the chicken and fox thing, but they are the ones that oversee that.

While it has done some upgrading in recent years, I believe because of the impact my legislation was having, CHEMTREK still does not provide the real-time information to emergency responders

in the case of a release or threat of a release of hazardous materials that my original proposal would provide.

CHEMTREK basically is a telephone service, so if there is anything that happens, they would have to find some way to communicate back to a central system in order to get some response to find out. And in some cases, it takes a great deal of time.

My appearance here today isn't really to debate the previous legislation, but I would like to see it certainly adopted. I want to center my remarks on the report produced by the National Academy of Sciences, which is entitled, "Special Report 239, Hazardous Materials Shipment Information for Emergency Response," and with particular emphasis on that aspect of the study that centers on my central reporting system concept.

The National Academy study was both extensive and comprehensive in its attempt to comply with this legislative mandate. I appreciate the efforts put forth, and believe for the most part that we have the first credible study of the matter of hazardous materials transportation.

It is quite clear that the Academy believes definite improvements are in the making for this system. Immediately, if we are to avoid what could be a major catastrophe, we are going to have to move into making some of these corrections.

The Academy cited six separate reasons why the current system is inadequate. Leading that list of six was that required sources of information such as placards or shipping papers, which is generally known as manifests, were missing or inaccurate, followed by the fact that these information sources were often obscured, destroyed or inaccessible because of a crash or fire or threat thereof or toxic exposure.

If you are the first person who comes upon the scene, whether you are a fireman, policeman or anybody else, and you do not have access to that kind of information, you are just in deep trouble.

The NAS report went on to point out that in as many as 25 percent of the roughly 10,000 to 20,000 truck transportation accidents and 10 percent of the 1,000 to 1,500 rail accidents each year that involve the release or threat of release of a hazardous material, emergency responders are unable to obtain information needed to properly deal with the incident in question.

Now, get that. We are talking 10,000 to 20,000 accidents in trucks and 1,000 to 1,500 rail accidents, and in 10 percent of those places emergency responders at least in possible danger. So if you are in that kind of a position, you know how it would be if you came across that kind of situation and didn't know what to do about it, because if you threw water on certain types of chemicals, it could explode right in your face.

It was found about a third of the trucks required to be placarded were subject to some violation of material and other regulations. These and other statements by the Academy verify the need for change that leads us to the question of just how to change the current structure to provide the needed information.

The Academy listed eight specific recommendations to achieve overall improvement. I guess we can concur with the majority of them, particularly as they relate to regulatory reform, government

agency oversight on information gathering, and additional emergency response training requirements.

I can also understand the final recommendation listed that my original proposal without any modification should not be implemented at this time. I was taking the long, hard approach. I realized we simply cannot establish a huge nationwide computer system and immediately have every generator, shipper, and emergency responder on line to it overnight. But what it did do was bring it to the attention of those who can provide some answers, and that is us.

There were bound to be major problems inherent in such a system that would have to be resolved before the degree of trust and confidence in such a system that is needed by all parties concerned can be attained. In the meantime, we may not only be not improving the current system, but might even worsen it to some degree.

It is for that reason that I endorse with some modification the Academy's first recommendation of implementing one or more limited startups or pilot projects of automated information systems.

The Academy recommended that such a startup would be best served by including only one rail system, as it is generally accepted that the rail has made more advances in the area of automated information in recent years than other modes of transportation.

I would request, though, Mr. Chairman, that your subcommittee consider adopting that idea but with the proviso that it be expanded to include perhaps a second rail line, or perhaps even a third, and most definitely a relatively few number of major trucking lines, too.

I think it is very important, and it is easy to rationalize that. The Academy points out that there are 10 to 20 times the number of truck accidents as there are rail accidents, and "to be the most effective"—and this is a quote—"to be the most cost effective, initial steps would ideally also target segments in which the potential payoff from improved information was greatest."

I accept the statement that a startup proposal involving just one rail system would cost in the neighborhood of $4 million. And assuming that this is correct, and that for an additional $3 million, all rails could be added, I do not believe that the initial startup cost for just two rail lines at the same time would be much more than that for just a single rail line.

Furthermore, in order to be cost effective and to properly determine the real benefits of any automated information system, trucking systems would have to be involved in any startup system, given just the sheer numbers of trucking accidents and the impact this one industry has on hazardous materials shipments.

How can any automated information system be properly judged if it is not applied to the largest player involved in the process? Now, that makes sense.

I am convinced that the evidence gathered as a result of the startup program that I am advocating would clearly indicate a much higher degree of reliability and cost effectiveness than any current system of providing this necessary information.

I want to raise one other point. In the NAS report, it was made very clear that any information system, no matter how limited or extensive, should be built upon existing capabilities, because of the

rapid pace of introduction of innovative information technology and transportation. We found this since the outset, since we started into this, that there has been just new technology that has come on board that would make this possibility much more feasible.

Certainly there are firms in certain segments of the carrier and shipper industries that could comply today with most of the record-keeping and reporting requirements necessary to participate in a modified national central reporting system at a cost that would not be deeply disruptive.

New capabilities are being developed for maintaining records on goods in transit to reduce inventory costs for monitoring vehicles to allow more efficient fleet utilization and for eliminating paper transactions by use of electronic data interchange.

Due to the difference between one carrier and another and one shipper and another, I believe it is imperative that we immediately move to establish regulations that will govern the development of all this new technology so that it is not done in such a piecemeal or fragmented fashion. In the interests of public safety, we need to establish at the very least guidelines for companies that will allow them to develop their individual systems while also interfacing with a larger network of systems.

I believe we must look to the future and prepare for it even in the movement of hazardous materials and provide the basis for the network of systems to work together. If we do not get in on the ground level of this new technology, it would be very difficult to ever coordinate the various systems into a single comprehensive system that could be utilized by all of our emergency responders.

Mr. Chairman, I realize this is perhaps not the easiest matter to grasp. It is very difficult. But it is nonetheless imperative that we move in the right direction. It will serve our future needs and will address a problem that simply isn't going to go away on its own. On the contrary, it will get even more complicated and manifest itself to the point of losing complete control over the issue if we don't do something about it now.

I know that is the objective of your subcommittee, and I certainly look forward to working with you and the Members of the committee to put together a comprehensive plan that will help resolve the problem and provide the security and the safety to not only the first responders to an accident, but also to the communities where that might happen.

Mr. Chairman, thank you very much for allowing me to express my views today.

Mr. RAHALL. Thank you very much for your excellent testimony.

Certainly, and I think most Members of the committee would agree with your objectives, and we all are very much concerned with providing safety, not only for the general public but for our emergency responders as well.

You basically have recommendations of the National Academy of Sciences study, as I hear your testimony. You call for more than one prototype—several prototypes, not only on rail systems but also on trucking lines as well. Is that correct?

Mr. APPLEGATE. Yes, that is true, Mr. Chairman. I don't agree with everything, but I think under the circumstances, I think the direction is generally pretty good. But, yes, I do think that the

study should be expanded into more rail lines and more trucking firms, and including trucking firms.

Mr. RAHALL. In your testimony you also stated the need to establish guidelines for information and tracking systems so the companies can develop your individual systems while also interfacing with the overall larger network of systems. Do you envision the development of such guidelines as part of the proposed limited start-up system?

Mr. APPLEGATE. Well, I think that would work within the scope of what it is that study will come out with, and I think it would be extremely important, and I think it could be done. I think it could be done very easily.

These companies have a lot of marvelous technology. There is a lot of wonderful technology out there, and all of this could certainly work together, and without taking away the individual abilities and directions of the rail and trucking companies now, but to be able to set up a general system and interface with it. I think it could be done, and done easily.

Mr. RAHALL. Your testimony makes a great deal of sense. It is certainly more important that we do it in a limited way in the beginning, set up these prototypes, rather than all of a sudden come in and impose a massive bureaucratic system. If we overwhelm everybody with too much information and get too complicated, we defeat our overall objective.

I thank you for your testimony.

Mr. APPLEGATE. I think that is true, and of course we did want to come in hard first, and get what may end up as the ultimate solution down the road, maybe the next decade or so, depending on what happens. What we first initiate might be the answer, we don't know. But at least it caught the attention, and that was much of the purpose which we are trying to gain.

Mr. RAHALL. We owe you a debt of gratitude for getting us started in the right direction. Thank you.

The gentleman from Wisconsin.

Mr. PETRI. Thank you, Mr. Chairman.

I wanted to basically echo your last words and thank you for your testimony this morning and for your leadership on this very important issue. Technology is evolving, and it is important for us to stay on top of it and try to do all we can to protect people while increasingly dangerous materials are, of necessity, moved about our country to keep our economy strong.

Mr. APPLEGATE. Thank you.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins, do you have any questions?

The gentleman from New Jersey, Mr. Franks?

Next to come in, the Chair will recognize Members as they appear this morning, is the gentleman from California, Mr. Kim.

Mr. KIM. No questions.

Mr. RAHALL. The gentlelady from Washington, Ms. Dunn?

The gentleman from Arkansas, Mr. Hutchinson?

The gentleman from South Carolina, Mr. Clyburn?

The gentleman from Texas, Ms. Johnson? Gentlelady, I am sorry. Doug, thank you very much.

Mr. APPLEGATE. Thank you very much.

Mr. RAHALL. We will now hear from the acting Administrator, Research and Special Programs Administration, U.S. Department of Transportation, Ms. Rose A. McMurray, accompanied by Al Roberts, Associate Administrator for Hazardous Materials Safety.

We welcome you. We have your testimony and it will all be made part of the record as if actually read.

TESTIMONY OF ROSE A. McMURRAY, ACTING ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ALAN ROBERTS, ASSOCIATE ADMINISTRATOR FOR HAZARDOUS MATERIALS SAFETY

Ms. MCMURRAY. Thank you, sir.

Good morning, Mr. Chairman and Members of the subcommittee. We thank you for the opportunity this morning to update you on the Department of Transportation's ongoing efforts to improve the safety of transporting hazardous materials.

With me today is Mr. Alan Roberts, Associate Administrator for Hazardous Materials Safety, who will respond this morning to your more detailed questions.

I especially want to address our progress in implementing the regulatory provisions under the Hazardous Materials Transportation Act, the HMTA, as amended by the Hazardous Materials Transportation Uniform Safety Act or HMTUSA of 1990. I would also like to submit for the record a detailed summary of RSPA's implementation of the HMTUSA provisions.

As you know, the HMTUSA was the most comprehensive change to hazardous materials legislation since the HMTA was passed in 1974. HMTUSA was a convergence of ideas, driven by unprecedented coordination and cooperation among the States and local governments, industries and Federal interests. It assigned our agency, the Research and Special Programs Administration, major new responsibilities. RSPA has made significant progress in carrying out the act's statutory obligations.

One of the priority programs under HMTUSA was the registration and fee assessment program, initiated in September 1992. The rule requires persons who transport or cause to be transported certain hazardous materials to file registration statements with RSPA and pay an annual $300 fee to fund an emergency preparedness grants program. To encourage registration, RSPA developed an extensive outreach and compliance program to advise shippers and carriers of the new requirements through information and education.

Over 200,000 informational brochures and registration forms were mailed out for the initial registration period. This year we are adding a new element to our registration efforts. While we will continue our aggressive outreach activities, greater emphasis is being placed on enforcement at the Federal, State and local levels, which would result in significantly higher registration. RSPA is also working closely with two of our sister DOT agencies, the Federal Highway Administration and the Federal Railroad Administration.

Today is the first day of the Federal Highway Administration's ROADCHECK 1993, a three-day intensive national program to identify motor carriers which are in violation of the Federal motor

carrier safety and hazardous materials regulations. Over 3,000 Federal and State inspectors operating at more than 300 locations throughout the United States will carry out extensive motor carrier safety inspections during the three-day period.

As part of ROADCHECK 1993, nine States, one from each Federal Highway region, will combine their inspection forces with all Federal highway inspectors nationwide to emphasize the registration requirement and to provide RSPA with a report of noncompliant parties for follow-up action.

Although we were somewhat disappointed with the number of registrants who filed for the first cycle, we are encouraged by the number of registrants to date for the 1993–1994 registration year, which begins on July 1st, 1993. Through our ongoing outreach and enforcement efforts, we estimate that 45,000 persons will register this year, which will generate 11.25 million for the grant program.

Mr. Chairman, the enforcement and outreach portions of the registration efforts are critical because the funds generated by the registration support our new emergency preparedness grant program. Through these grants we are working with the States to increase the training of the over 2 million emergency responders as well as assisting local emergency planning committees.

This year is the first year of the grant program and we have received an overwhelming response to it. In fact, approximately $3.5 million has been awarded to 49 States and territories so far this fiscal year, and we anticipate awarding a total of $8.9 million by the end of fiscal year 1993.

In addition to providing needed resources for the preparation of emergency responders, HMTUSA also required us to issue regulations requiring training to be given to all hazardous materials employees by their employers. This training covers the safe loading, unloading, handling, storage, and transportation of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transport of hazardous materials. We look to this rule to assist in increasing safety by helping assure that all employees involved in hazardous materials are trained to perform their duties.

Another HMTUSA initiative which we have just heard about is close to completion with the delivery of the National Academy of Sciences study on the feasibility and necessity of establishing a central reporting system and computerized telecommunications data center. We are reviewing this important study, and are preparing a report on the NAS recommendations to submit to Congress later this year.

Closely related to this study is a rulemaking in progress which addresses improvements to the current system of placarding vehicles transporting hazardous materials and establishing an extra reporting system and data center. An advance notice of proposed rulemaking was published last year. We are analyzing those comments and will include them in our report to you on the NAS study.

In another major action, RSPA this year published an interim final rule to implement the Oil Pollution Act of 1990. The purpose of the rule is to protect the environment from oil spills by requiring carriers to develop improved oil spill prevention efforts and emer-

gency response capabilities. This is a controversial rule because the definition of oil in the act includes nonpetroleum oils such as vegetable oils.

Because of the concerns expressed by the edible oil industry and others, a public hearing was held here last month, and the comment period on the interim final rule was extended until June 3rd of this year. We are currently reviewing the comments on the rule to determine further action.

Mr. Chairman, and Members of the subcommittee, RSPA is committed to working with all segments of the hazardous materials community to safeguard our environment and improve hazardous materials transportation safety. At the Federal, State and local levels, we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal: improved safety, nationwide uniformity in the application and enforcement of the hazardous materials regulations.

We look forward to working with you in the coming months as you reauthorize the Hazardous Materials Transportation Act. We thank you. Mr. Roberts and I are available to answer any questions you may have.

Mr. RAHALL. Thank you very much, Ms. McMurray.

Let me begin with a few questions, and then recognize my other colleagues and probably return for a second round.

The 1990 act required DOT to coordinate with other Federal agencies to develop public sector training curriculum for emergency response and preparedness teams, and to minimize duplication of Federal efforts in training programs for such teams. Can you update us on the status of these efforts first, and then second, are there any other areas where you believe similar agency efforts should be made?

Ms. MCMURRAY. We very carefully worked with all of the Federal community in developing the curriculum, for example, for the recipients of the HMTUSA emergency preparedness grants. We have a very cooperative relationship with FEMA, the Department of Labor, the Department of Energy, and HHS, and continue to find them to be very cooperative and very helpful to us with their technical expertise and assistance in developing a uniform and consistent curriculum.

With respect to other initiatives that we are working on, I defer to Mr. Roberts, who may have more detailed information about that.

Mr. RAHALL. Mr. Roberts?

Mr. ROBERTS. This is rather a unusual circumstance in that it is a directed assignment based on the statute. It is outside the regulatory format. The other program areas usually involve delegated regulatory response to these various agencies such as the Occupational Safety and Health Act (the Williams-Steiger Act).

So it is a little bit more difficult, although we have established similar groups. I chair the Interagency Committee on Explosives, with particpation by which about eight or nine different agencies. Through that process we are trying to keep each agency apprised of what is going on.

There is also an organization called the National Response Team, made up of 15 Federal agencies. It originally was set up to imple-

ment the Federal Water Pollution Control Act and the National Contingency Plan. Recently that organization established a prevention committee, and I am also the chairman of that committee. Through this forum we are able to exchange viewpoints and work with each agency relative to creating a better body of knowledge on each agency's activities.

This is rather important. One area is defining toxic materials. When you have different Federal break points for toxic materials, you create confusion, not only in the regulated community but also among the regulators and enforcement people. So it is a worthwhile endeavor for us to pursue.

Also, in terms of our national interest and international posture, there is quite a bit of activity going on in this particular area.

Mr. RAHALL. In testimony this subcommittee received from members of the shipping industry, objections were raised about assessing registration fees upon foreign shippers. The thrust of these objections seems to be that foreign countries may retaliate.

Can you tell us your views on these objections, and do you know if any foreign countries impose similar fees on U.S. shippers?

Ms. MCMURRAY. We are considering a provision of exempting foreign shippers. You mentioned, of course, the possible international repercussions. It is also a very difficult program to implement, and we have attempted to make it a very simple administrative endeavor, to collect fees from shippers of hazardous materials. When you consider the network and the numbers of international shippers, we simply didn't believe we could develop a simple process to identify them and then collect the fees.

We also have concerns regarding international reciprocity issues and a fear that perhaps there might be, as you point out, some type of retaliatory fee imposed upon our exports.

Al may have a more detailed viewpoint of that to offer for the record.

Mr. ROBERTS. When this legislation was originally adopted, I think it had broad support from industry, and without much concern for this particular aspect. I don't think anybody is concerned about a requirement that they pay fees overseas. It is probably more the concern over what it would take to get the appropriate documentation back so you can export your product to some foreign country. In some cases, the paperwork process may take two years, for example, not to collect the money but just to get the paperwork back that would constitute the authorization to make the shipment.

This has been discussed at the EEC in Brussels, and an informal finding was made, that there was no GATT violation. I think that would be correct, because we equally apply this overseas as we do domestically and that is the first test. But it has been strongly objected to by representatives from Germany, the United Kingdom, Greece, and Australia in a formal transmittal through the Department of State.

We recently received a letter from a representative of the Canadian government objecting to the application of this requirement to foreign shippers. This is of concern relative to the favorable balance of trade we enjoy in the area we regulate, which is approximately $20 billion favorable to the United States economy.

Mr. RAHALL. Ms. McMurray, from your discussion of the Oil Pollution Act you address the controversies surrounding the inclusion of vegetable oils in the rules. Can you elaborate on this problem? Does the department have any recommendations on how to define vegetable oils?

Ms. MCMURRAY. We recognize this interim final rule has provoked some mild controversy. In recognition of that, we extended the public comment period to June 3rd and held a public hearing on May 13th.

We have received a panoply of comments in response to the interim final rule. Since we are in rulemaking, I can suggest to you we will consider all comments.

I know the Secretary of Transportation has been very concerned about information and comments he has received from the public about our proposal. We believe that if comments we receive on the public docket suggest that there are dissimilar risks in regulating petroleum oil than nonpetroleum oil, we believe regulatory distinctions may be in order. But we believe we should thoughtfully deliberate on comments in the docket, and will be prepared fairly shortly to take an action.

Mr. RAHALL. At this point I recognize the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. I would just like to follow up on the edible oil controversy. Are there other commodities where the same dilemma is posed, where they are not harmful to human health, but may have some environmental question mark over them?

Mr. ROBERTS. If I understand the question clearly, the answer is yes, there are other materials outside the petroleum area. Under the Comprehensive Environmental Response Compensation and Liability Act, i.e. CERCLA, Section 306(a) requires to us list and regulate as hazardous materials all hazardous substances identified by EPA under another provision of that statute. That includes all materials listed under the Clean Water Act, the Clean Air Act, the Resource Recovery Conservation Act, and two more that I can't even recite.

This is a long list of materials that we characterize and identify as hazardous substances under our regulations, and we are required to list and regulate these materials. In fact, the interpretation has been for some years we don't even have to do a notice of proposed rulemaking because it is a statutory mandate. There are a number of materials that are food additives and other products that we are required to regulate as hazardous materials under that statute.

Mr. PETRI. It occurs to me that this is an area that is important because of the danger that can happen in accidents. If we end up overmandating your regulatory apparatus, it could be quite counterproductive, because the seriously hazardous and dangerous materials can get lost in the paperwork clutter and lower the willingness and morale of the whole system, because people will start thinking that it is ridiculous.

Do you have any comment on that? Would it be desirable from an administrative point of view so far as getting the job done of reacting to the classic newspaper-type train accidents with some ex-

plosive chemical near a town, if we didn't worry so much about cooking oil and this kind of thing?

Mr. ROBERTS. Well, back to the oil, this is something we are looking at right now. Keep in mind there was a statutory hammer date of February 18th, and admittedly we did hurry through a rulemaking in a short time frame. As one trade association pointed out, if we didn't, then there is no discretionary agency decision or determination of what level there would be substantial harm caused by oil (which we specified as 42,000 gallons). That is not the case. Anybody can argue what that level would be, because of the agency's failure to exercise its discretionary responsibility as of that date, and that was the statutory date.

Now, obviously a lot of reaction has been drawn from what historically would have, been a notice of proposed rulemaking, and we probably would not be faced with this current controversy had we dealt with it in that fashion. The situation did not permit us to do it that way, mainly so we could get the discretionary level for substantial harm at 42,000 gallons. Otherwise, very onerous planning requirements would be imposed on all transportation of oil in this country, or could be construed that way.

Now we are in a process of reviewing the comments. I think our agency has a pretty fair record on this subject. Some people will recall how we dealt with the ammonia issue several years ago. I have every confidence that when we are done with this process, most, if not all, persons on both sides of the issue will be satisfied with our position.

Mr. PETRI. One or two other questions. At the end of the day I think we are going to be hearing testimony from a fiber drum manufacturer, concerning a rule which will preclude the use of fiber drums domestically even though they have been used for some 30 years without any apparent real difficulty.

What is the reason for this? How do we reconcile common sense with administrative purity or whatever it is we are pursuing here?

Ms. MCMURRAY. That particular matter is back in the agency for reconsideration. It revolves around the issue of meeting H.M. 181, which is our body of regulations regarding packaging and performance standards.

Our test of whether a technology or a packaging meets the spirit of H.M. 181 is whether in fact the packaging represents an alternative, commensurate level of safety without compromise of public safety. This particular packaging sought an exemption to H.M. 181. Mr. Roberts had made a preliminary decision. The decision was appealed to me.

In light of the fact that other information had come to my attention that might not have been considered during Mr. Roberts' deliberation and decision, the matter is now returned to Mr. Roberts for further deliberation. We would expect to have a decision fairly soon, his decision will be rendered fairly soon. And, of course, the appeal procedure is still in effect.

I am still the appellate official on his preliminary decision.

Mr. PETRI. I certainly wouldn't want to prejudice the decision or interfere in it, but it does occur to the casual observer that if something is used a lot and it hasn't caused a lot of problems, we might find other things to spend the taxpayers' money on.

One last question. Do we attempt to work through international conventions to speed up or require common paperwork across borders in this area?

It would seem that all countries have an interest in trying to have conferences with your counterparts in these countries and working out compatible practices. It isn't worth an individual shipper's while to spend a lifetime making the system efficient. But they all benefit from it and that is one of the things we are supposed to be doing as a government, that is, to speed the flow of commerce while protecting the people.

Are we spending time trying to work out these glitches or accommodate differences in definitions that really are all aimed at the same thing so as to make it more user-friendly for conducting international commerce?

Mr. ROBERTS. Yes, sir, I think the point should be made that a report was made to the General Assembly of the United Nations some years ago by the Secretary General that about one-half of world commerce is in dangerous goods. So it is no small thing.

The United States has been involved in the activities of the United Nations Committee of Experts on the Transport of Dangerous Goods since 1954. I have been involved in it since the early 1970s. I was chairman of the committee from 1980 to 1988.

The committee develops recommendations for adoption by all the member states of the United Nations and the operative bodies subsidiary to the United Nations, that is the International Maritime Organization, the International Civil Aviation Organization, several of the European agreements, and the International Atomic Energy Agency.

For many, many years, not much serious attention was paid to this activity. We had our own domestic system fully developed and implemented by the Interstate Commerce Commission, and back in the early 1970s things began to change. The maritime nations began to take the IMO standards very seriously, and all of a sudden U.S. industry and others said, this is no joke, we better get busy.

It is through this medium that we have developed a worldwide set of standards for basic packaging standards, packaging performance, classification of materials, grouping of materials according to their degree of hazard. There was a complete revamp of the explosive system worldwide, classification and regulation, which we have adopted here in the United States as a major improvement in our explosives regulatory system.

And probably, rather important, is the Chapter 13 requirements of the U.N. standards related to communications. That is placarding, labeling, documentation, marking of packagings. So a very elaborate and detailed system has been evolving over the years. It still has much more to do. It has been a big effort on the part of U.S. industry organizations, some represented in this room today, plus our department through the Department of State.

I have personally spent 93 weeks of my life in Geneva, Switzerland, working on this very topic, so I do feel I am able to respond to your question quite well. As I mentioned earlier, we look at it in two aspects: promoting safety, promoting international uniformity, helping emerging nations with their programs, pesticides and

things like that; but also to make sure that we don't have unnecessary barriers to trade.

As I indicated earlier we have a $20 billion trade surplus, estimated by one major trade association, and one of the easiest ways to stifle that trade would be in the name of a safety requirement that could unnecessarily impede our international business.

Ms. MCMURRAY. I would also add that one of the perhaps more simple initiatives that we have proposed in our fiscal year 1994 budget is to translate portions of the Emergency Response Guide, which is the single most important information guide that emergency responders use, and our effort there is to propose translating portions of that Emergency Response Guide into Spanish so that we can facilitate international trade with our trading partners in Mexico.

Mr. RAHALL. Mr. Roberts, I understand we have a fiber drum in the back of the room. Perhaps on your way out you may want to kick it or take it out in the hall and drop it.

Mr. ROBERTS. I have seen them many times.

Mr. RAHALL. The Chair will recognize the gentleman from Ohio, Mr. Applegate.

Mr. APPLEGATE. Thank you, Mr. Chairman.

I think that national response guide comes out about once every three years or so. It is never really up to date. I am not sure how much reliability there is on that, after a year or two or even up to three years.

But let me just ask this. I think, Mr. Roberts, you sort of were I guess the creator maybe of the placarding system, or at least you were there and helped to initiate it.

Mr. ROBERTS. The current one, sir, yes.

Mr. APPLEGATE. And you say that it is working well, at least it has always sort of been your general comments. But yet the NAS says that it is not necessarily working well, that perhaps maybe as much as a third of those placards are missing, not available, and as a matter of fact in our own testimony that we used in the figures that we used, 50 percent of them were inaccurate or missing, and that was from the Office of Technology Assessment.

Could you comment on that, tell me what you think of the placarding system. Is it working better than what these two people have found out, or is it working? Tell me about that.

Mr. ROBERTS. It is a little bit complicated, but there have been several studies done. I don't know if any of the studies really were the result of sitting by the road looking at trucks going by, determining what the rules required for placarding and then ascertaining that the vehicle was in compliance. That is the only way you can really draw that conclusion.

For example, we require placards on four sides of vehicles. Most countries only require two placards. If one placard is missing, that is a violation of the Federal regulations, and that is written as a violation. Three other placards are still there. I am not defending that, but it means it is not an unplacarded vehicle.

If it says 40 percent or 50 percent noncompliance, I don't have any idea what the basis is for that statement. In the COHMED program, we have asked for their commentary on this, and none of the people I talked to said they would count more than 10 percent

of the vehicle population in violation of the placarding rules. That was any placard missing, not all placards missing. And we do have a four-placard requirement on all these vehicles when placarding is required.

Mr. APPLEGATE. How do you suppose they come up with the figures they come up with?

Mr. ROBERTS. I don't know, sir. One of the study people is going to make a presentation later on, perhaps they could answer that question.

Mr. APPLEGATE. I am sure that they will. Let me ask you personally, do you feel that there is a need to improve the system as we have it now, or do you think the whole system is working well? Do you think we need anything approaching a central data system, even one as we recommend that perhaps much of what is there now would stay in place, but a central general system that would interface to provide the safety and security that we are talking about?

Ms. MCMURRAY. I think we would like to make a general comment about the NAS study. It is our view that the study is very well written, it offers some very positive recommendations, and we of course are very interested in any recommendations having to do with improving the level and quality of information available to first responders.

The report offered a number of recommendations that the Department of Transportation has been addressing over time and historically since we received the hazardous materials mandate. In every area that the report describes improvements, there are initiatives under way, either by my agency or other DOT sister agencies like the Federal Railroad Administration, Federal highway, Coast Guard or the FAA.

In response to the report we have formed a study group of all the members that I—organizations I just mentioned. We also think that—I mentioned some of the initiatives that are ongoing. I would like to mention a couple of those, in an effort to address the fact that the department has not been responsive to the needs of firefighters, and we recognize that human error, human factors are the number one problem we have in handling emergency situations.

We have an emergency preparedness grant program, which I mentioned in my testimony. Our first grants went out last month, and we expect that the outcomes of the use of that money will start to address or begin to address better the information and response needs of emergency responders.

We have mentioned the requirement in HMTUSA of the training rule which now requires hazardous materials employers to train their employees in the handling and storing of hazardous materials. We believe that rule will go a long way in assisting in prevention of accidents.

One of the similar initiatives that the department has under way which is very similar to the conclusions drawn in the NAS study is a demonstration project that the Federal Railroad Administration has in Houston. It has been ongoing for about a year now. The results are expected in another year.

And that is a partnership cooperative demonstration between the Federal Government and the Houston Port Terminal Railroad As-

sociation in which automated information will be used to develop information for emergency responders to deal with a railroad hazardous materials incident. We believe that the outcome of that initiative and that demonstration will help us better review the results of the study.

The Federal Highway Administration, in addition, in its intelligent vehicle highway system, has as a component tracking and monitoring of vehicle cargo movements of hazardous materials.

So the point I want to make in raising the initiatives that the department has under way is that we believe that the report conclusions are very meritorious, and we believe that the department's response to the report would be much better served by awaiting the results of the initiatives I mentioned, but most principally the Federal Railroad Administration pilot that does involve a specific railroad and firefighters in the Houston area.

Mr. APPLEGATE. Well, I am not sure that answered all that I wanted to know right now. We will let that go. I just wanted to ask you about—I am very interested, very concerned, as we all are, and you have mentioned about the dangers to the first responders. And certainly any time that they come upon the scene, why, they are confronted with the possibility that their lives are going to be ended right then and there.

And they do have this placarding system, as we talked about, and with that there is a code which apparently when you are through with that, you go to the guide to find out something, more explicit information.

And in so many cases the guide is completely out of whack. It is not up to date. And so that presents a danger. And the only other way perhaps is to go into the cab and to find the manifest. The manifest, of course, is very explicit in what is on board that truck or railroad car, if, of course, you can get to it. And if it is on fire, there is not much you can do about it.

Or, as in the case of Miamisburg, Ohio, when they went back and forth 10 hours evacuating some 30,000 people a couple of times before they were able to determine that there wasn't a real emergency, but they didn't know that. It is like somebody holding a gun at your head with no bullets in it. You don't know that, and it tends to become very dangerous, and you can feel it within you.

But in that instance, of course, it was found out it was all right. But the engineer refused to turn the manifest over to the fire chief who was there. And the fire chief was very upset, because it placed everybody in jeopardy.

And so, you know, I have trouble with that kind of a system. There has to be a better system by which we can get that information into some kind of a central bank and have it pop back and say, this is what is on board and this is what is needed in order to respond and to protect not only the firefighters or police but also the community and whoever else is around.

Ms. MCMURRAY. Well, we clearly are open-minded to the use and application of available information technology to assist in emergency response. And again, the NAS study, I think, went a very long way in pointing out the potentials of such automated information.

Again, I point out that we await the results of a pilot, that the FRA is currently conducting, which specifically uses computer technology, automated information, to allow in this particular case fire fighters to respond to rail accidents in the Houston area. We think again that that pilot demonstration will bear fruit for the department to consider. And in conjunction with the findings in the report, I think will serve as a basis for action that the department will take and may take as a result.

Mr. APPLEGATE. Just one real fast question, Mr. Chairman, a little different, but do you and your department have any opinion about the States having the right to be able to control transportation of hazardous or solid wastes into their States?

Mr. ROBERTS. I guess the answer is yes. We carry out a statutory mandate relative to the operation of the preemption program including applications for determination of non-preemption, and the congressionally stated purpose is national uniformity. If you have 33,000 jurisdictions in the United States, each empowered to write its own rules and regulations, I would suggest that would be a gross example of balkanization relative to the operation of a nationwide transportation system.

We have encountered cases where a State embargoed the movement of liquefied natural gas and propane into the State until certain hours of the day. Therefore, all the vehicles piled up at the State border in the adjacent jurisdiction. This is not necessarily the right way to go in terms of protecting the nation's people from these materials.

One of the factors we look at in each of the rulings we address is unnecessary delays. The more material that is pumped into the system, that stays in the system and fails to come out of the system, the higher the risk exposure is to the American people. Therefore, unnecessary delay means keep the material moving to its intended destination.

For example, every day there are approximately 100,000 truckloads of fuel oil and gasoline delivered, most of the time successfully. Obviously if each local jurisdiction is empowered to write a distinct and separate rule relative to how that vehicle is equipped, and certain other aspects relative to its operation, I would suggest we have major problems just distributing gasoline to the American people.

Mr. APPLEGATE. So you don't believe there is a principle involved here that the States should have that right if their legislatures wanted to make that decision, provided, of course, that the Congress gave him the right to do that? I understand the interstate commerce law.

Mr. ROBERTS. We have historically, taken the position that, before the preemptive language was adopted in the current statute, there was a need for area-wide coordination, consultation, so that people did not look just to their own jurisdiction relative to the decisions or judgments they made relative to the protection of their citizens.

The current statute pretty well declares, you might say, that there is Federal supremacy relative to things such as documentation, placarding, marking, labeling, packaging. But it leaves the door open for a lot of involvement on the part of the States on such

issues as routing, and routing is a very important issue, and there are Federal guidelines in process for routing. We have been attempting to administer a Federal routing scheme, and hopefully we can make this work with the improved consultation at the State and local levels.

Historically one of the problems we have had is getting the States to actively participate in these processes that we have established over the years, and we can provide you with a number of illustrations of that point.

Mr. APPLEGATE. Thank you, Mr. Chairman. There is a lot more questions, but——

Mr. RAHALL. We will have a second round. Thank you, Doug.

The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I notice in Section 12 of the penalties, you are proposing to increase the maximum civil penalty from $10,000 to $25,000. Am I right on that?

Ms. MCMURRAY. That is correct.

Mr. COLLINS. The incident you talked about earlier about requiring four placards, to what extent could that civil penalty be there?

Ms. MCMURRAY. I am sorry, sir, could you repeat the last part of that?

Mr. COLLINS. Under the illustration that the gentleman gave about the requirement for four placards, one placard was missing, to what extent would that civil penalty or could that civil penalty be levied on that shipper?

Mr. ROBERTS. Up to $25,000 per day.

Mr. COLLINS. I am sorry.

Mr. ROBERTS. Up to $25,000 per day in terms of a civil penalty.

Mr. COLLINS. For missing one placard?

Mr. ROBERTS. Yes, that is the maximum potential penalty that may be levied by the Federal agency enforcing the rule. That does not mean—there are criteria in the act relative to penalties such as culpability, repetitive nature, things like that.

So I would not suggest that would be the exact penalty. But there have been incidents where the penalties have been severe. We can provide with you information on that if you desire.

Mr. COLLINS. What was the total number of dollars collected in previous years in civil penalties? Do you have that figure?

Mr. ROBERTS. I do not have the figure with me handy.

Ms. MCMURRAY. We can provide that for the record.

Mr. COLLINS. Is there a minimum as of today?

Mr. ROBERTS. Two hundred and fifty dollars a day.

Mr. COLLINS. Is that the minimum today?

Mr. ROBERTS. Yes, sir. For example, the earlier discussion about registration, the minimum penalty we may impose for a registration violation is $250.

[The information received from Mr. Roberts follows:]

CIVIL PENALTY ASSESSMENTS UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT

	FY 89	FY 90	FY 91	FY 92
FAA	282,850	136,050	986,800	1,063,350
FHWA	310,836	1,062,990	564,675	181,590
FRA	611,810	3,350,765	3,501,781	2,741,580
RSPA	408,600	518,800	728,234	401,369
USCG	118,600	179,783	287,787	270,150
Totals	$1,732,696	$5,248,388	$6,069,277	$4,658,039

Mr. COLLINS. You mentioned the transportation of fuel and gasoline. I am going to give you an incident that happened to a carrier in the district, 3rd District of Georgia.

A piece of debris flew up from the highway and ruptured a fuel tank, not on the bottom but a partial way up, and he actually lost about 25 to 50 gallons of fuel on the roadside—not from the transport tank, this was from his vehicle tank. He was levied a $10,000 fine.

Is that considered a hazardous waste spill under the Hazardous Waste Transportation Act?

Mr. ROBERTS. No, sir. I don't know anything about the case you cite, but I would assume it was levied by the Environmental Protection Agency or the Coast Guard under the Clean Water Act. I assume that, but I don't know that.

I doubt if that was a motor carrier safety—I know it was not a Department of Transportation Hazardous Materials Transportation Act violation. There have been severe penalties levied by those agencies for discharge of oil by transportation carriers. I assume that is what that was.

Mr. COLLINS. That is all I have, Mr. Chairman.

Mr. RAHALL. The gentleman from South Carolina, Mr. Clyburn?

Mr. CLYBURN. Mr. Chairman, if I may, I would like to revisit the issue of H.M. 181. Did I understand you to say that you are reconsidering or this has been sent back? Exactly what is the status of that exemption or failure to exempt?

Ms. MCMURRAY. We were asked to reconsider our decision on appeal. I am the appellate official. It came to my attention during the appeal that there was information that may not have been considered during the preliminary decision on the matter, and I vacated the denial and returned the matter back to Mr. Roberts, who is the deciding official, for his reconsideration. He will render a decision on the new information that has come to our attention. And in the event that decision is not acceptable to the requestor, then I am the appellate official in the event that it reaches that point.

Mr. ROBERTS. Mr. Clyburn, I will seek to clarify the way you started the question, that is relative to H.M. 181.

H.M. 181 is a regulatory docket. It was started back around 1980, and it was the mechanism for implementation of packaging performance standards as opposed to detailed design specifications, for which we had several hundred pages of regulations. This is consistent with the international system, the system adopted by Canada, and over the years it evolved into the regulatory standards that we presently have in place or which are about to come into effect.

In doing this, we reclassified materials and gave them grades of hazard, if you will, and called them packaging groups, and assigned different levels of performance for each of the packing levels. There were many materials that came under regulation during the 1980s, some of which were regulated by congressional mandate, such as hazardous substances for which we had no packaging standards throughout those years. They were characterized as other regulated material, or ORM–E, as we classed them.

For some of these materials, such as polychlorinated biphenyls, we had no packaging regulations in force. During the rulemaking

process, it was decided to propose regulations and packaging performance standards for all these materials, the hazardous substances as well as previously regulated hazardous materials. So literally hundreds of different materials came under packaging regulation in terms of packaging performance during this rulemaking process, and the rule was published finally in 1991. There have been subsequent amendments.

At issue here is one of many of the packagings that came under this performance system during this rulemaking process. It not only applies to many of the materials that were previously authorized in fiber drums without the specification requirements, but it also applies to dozens—hundreds of additional materials that were recently identified as hazardous substances. So there are many, many materials involved that were not previously regulated under the earlier regulations until passage of H.M. 181 as a final regulation.

Subsequent to all this, and after the appeal process and the rule was completed, there was an application submitted for an exemption to permit fiber drums to continue in use for certain materials previously authorized prior to the rulemaking, and this is where we are today, as described by Mrs. McMurray. We are in the exemption process.

The exemption process is acknowledged by the Hazardous Materials Transportation Act with certain standards in that act, for example, equivalent level of safety. So that is one of the issues we have to deal with relative to this process.

Mr. CLYBURN. Thank you very much for that enlightenment. But am I right in assuming that all of this has as its basis safety.

Mr. ROBERTS. That is correct.

Mr. CLYBURN. And so that is the basis of my question. So if the fiber drums have a 99.9 percent record of safety, then I am assuming that is why the request was being made for an exemption in this particular instance.

Mr. ROBERTS. Yes, sir. One of the things you have to be concerned about, if you want to discuss the exemptions process generally, and I have been managing it since 1975, is where is it really an exemption and where are you really changing the regulations by exemption. When there are millions of packagings addressed by a particular exemption, you must accept the fact that I have changed the rule. And subsequently, you go to a rulemaking.

Now, there are other competing packaging systems, for example, steel drums that are required to meet the performance standards. Therefore, this is not just a minor event it is a major decisional process we must go through. And there are significant ramifications relative to the future of our regulatory system.

I may also point out that the Secretary is obligated to regulate materials that may pose reasonable risk to health, safety or property when transported in commerce. That does not mean that we have to go out and prove that each and every material poses a risk in excessive levels, nor are we required to frame our regulatory program based on facts and experience. We look at the risks presented by the material.

We think the United Nations did a pretty fair job relative to the grouping system. We have applied it because it is an appropriate

way to deal with risk, we think. Also, it is consistent with the international system for compatibility of movement.

What we are doing now is reexamining this one particular exemption issue. It has been remanded back to me for further consideration. I am not permitted to say what our conclusion is on this therefore what I am providing you is background.

Mr. CLYBURN. I understand.

Mr. ROBERTS. It is a rather substantial issue we are dealing with here.

Mr. CLYBURN. I understand that. I am not asking you to violate that. But would it be a violation to ask for some kind of a time frame? If it is, just tell me it is.

Mr. ROBERTS. Very frankly, the letter back to the organization from Ms. McMurray is dated June 1st. I have it here. I believe a copy has been provided to staff. I don't know if all this wants to go into the record. I will provide it if you want it, but I have barely had time to assign the appropriate staff in regard to other matters before us to move on this. I think we will try to move on this within the next 60 days.

Mr. CLYBURN. Thank you. I am a very patient man.

Thank you, Mr. Chairman.

Mr. RAHALL. Mr. Roberts, could you make that letter available to the subcommittee? I don't believe we have a copy. Thank you.

[The information follows:]

US Department of Transportation
Research and Special Programs Administration

The Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

JUN 1 1993

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RE: Appeal of Denial of Application for Exemption (10836-N)

Dear Ms. Hill:

In his January 12, 1993 letter, the Associate Administrator for Hazardous Materials Safety of the Research and Special Programs Administration (RSPA) denied the application by the Fibre Drum Technical Council (FDTC) for an exemption from certain requirements of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. On March 15, 1993, you appealed the Associate Administrator's denial, on behalf of FDTC, pursuant to 49 C.F.R. § 107.121 and my February 12, 1993 letter extending the time for filing that appeal.

Your appeal points out that the list of comments submitted on FDTC's exemption application, as set forth in Part VI of RSPA's Exemption Evaluation Form and p. 2 of RSPA's December 4, 1992 pre-decisional Issue Paper, does not include an October 16, 1992 letter in which FDTC purports to respond to other comments in the docket. As you acknowledge, FDTC's comments were submitted after the close of the comment period. However, it is RSPA's policy to consider late-filed comments to the extent that is practicable. Cf. 49 C.F.R. § 106.23. I am not aware of any reason why it would not have been practicable for RSPA to have considered FDTC's October 16, 1992 comments before the Associate Administrator made his decision.

Accordingly, I am vacating the Associate Administrator's January 12, 1993 decision denying FDTC's exemption application and remanding this matter to the Associate Administrator for a new decision on FDTC's application. In making that new decision, the Associate Administrator shall consider FDTC's October 16, 1992 comments and any other comments submitted on FDTC's exemption application to date.

I have recently received two letters directed to FDTC's appeal, from Myers Container Corp. and The Association of Container Reconditioners, both dated May 4, 1993. Inasmuch as I am remanding FDTC's exemption application to the Associate Administrator for a new decision, I am directing that these two letters be placed in the public docket for consideration by the Associate Administrator, to the extent he finds them relevant and material. Copies of these two letters are attached, and FDTC is allowed 20 days from receipt hereof to respond to them.

Otherwise, this remand does not reopen the record on FDTC's application, and there is no right to submit further comments. In making his new decision on FDTC's exemption application, the Associate Administrator retains the discretion to rely on any information which he finds relevant and helpful in determining whether an exemption should be issued under the authority of 49 App. U.S.C. § 1806(a) -- including comments submitted in rulemaking or other exemption proceedings. However, even if explicitly considered by RSPA, comments or other information already contained in the docket of another proceeding (including HM-181) are not deemed to be part of -- and need not be physically placed in -- the docket for FDTC's exemption application.

In accordance with 49 C.F.R. § 107.121, there will be a right to appeal the new decision of the Associate Administrator on FDTC's exemption application.

Sincerely,

Rose A. McMurray

Rose A. McMurray
Acting Administrator

Enclosures

The Association of
Container Reconditioners

May 4, 1993

Rose A. McMurray
Acting Administrator
U.S. Department of Transportation
Research and Special Programs Administration
400 7th Street, S.W.
Washington, D.C. 20590

Dear Ms. McMurray:

I am writing in response to the Fibre Drum Technical Council's Appeal of Denial of Application for Exemption (1036-N) dated March 15, 1993, in which several unfounded and derogatory statements were made about the steel drum reconditioning industry. My comments are meant only to correct some of the distorted FDTC remarks concerning the environmental practices and status of the drum reconditioning industry in the U.S.

Section 3(c) of the FDTC appeal, found on pages 10 and 11 in the document, purports to delineate environmental issues in support of the FDTC exemption request. FDTC states flatly, "...fibre drums are more environmentally friendly than steel drums." In support of this statement, the group claims some of its customers have switched from steel to fibre drums, and that "...paper from fibre drums is recycled." In addition, says FDTC, "at least one" manufacturer of fibre drums has developed a recycling system for its containers.

FDTC also asserts that steel drums "...are reconditioned in a more limited manner..." than fibre drums, and have been "...disposed of at sites that have been or eventually will be placed on EPA's National Priorities List for Superfund remediation."

FDTC argues that steel drum reconditioning "...leads to the generation of hazardous wastes..." which must eventually be disposed, and some steel drums are "discarded" while fibre drums "...may be safely incinerated thereby reducing the amount of landfill space (sic), which is growing scarce."

Careful readers will recognize the professional use of misdirection and innuendo in many of the FDTC statements. In my comments I will attempt to expose the Council's assertions.

To buttress its claim that fibre drums are more "environmentally friendly" than steel drums, FDTC makes much of the fact that a single Council member

has a limited recycling program in place and, consequently, some paper from fibre drums may be recycled. If, as industry statistics indicate, more than 39 million fibre drums are used annually to transport hazardous and non-hazardous materials throughout the U.S., the claim that four mobile and two stationary recycling units constitute a serious national recycling effort for these containers is absurd. That these units are used to reclaim some paper from fibre drums is not disputed, but the number of drums actually recycled each year is only a small fraction of the total. To be charitable, assume these units handle as many as five million drums per year. This still leaves about 34 million fibre drums untouched by FDTC members. Where do all these drums (and their residues) go?

Ironically, one answer to this question is that ACR drum reconditioners process a significant number of fibre drums for recycling every year, a fact FDTC was loath to admit because these are the same firms that accept steel drums for reconditioning and recycling. Another, less environmentally friendly, answer is that a great many fibre drums simply are crushed and thrown into landfills, presumably along with their hazardous residues. Interestingly, over a period of several years, one producer of fibre drums criticized the steel drum for its "indestructibility...and long life..." while advertising the fibre drum as "The Disposable Alternative," i.e., acknowledging the negative environmental characteristics of that packaging.

FDTC implies that steel drums are reconditioned "...in a more limited manner..." than fibre drums. This claim is false. According to ACR estimates, approximately 40 - 45 million steel drums are reconditioned by our industry <u>every year</u>. Since most fibre drums are structurally incapable of being reconditioned for reuse - to our knowledge, none are reconditioned for hazardous materials service - and the industry seemingly favors recycling or disposal over reconditioning and reuse, one can only assume the FDTC claim was penned by someone not fully familiar with actual practices in the field.

The FDTC makes much of the fact that some steel drums have been "...disposed of at sites that have been or eventually will be..." named to EPA's Superfund list. Because this statement is immediately followed by another which points out that some reconditioners produce hazardous waste as a by-product of their processing operations, one could be lulled into concluding that all reconditioners are or will soon become Superfund sites.

Nothing could be further from the truth. Like other industries, some of whose members have been in business for 100 years, a few reconditioning firms have been found to have contaminated property. These sites have been identified and either are closed awaiting remediation, or are being cleaned up by their owners.

One fact is clear, the overwhelming majority of steel drums sold every year are collected and processed for reuse or recycling by reconditioners. As noted earlier, this may not be true for fibre drums, even those that previously contained hazardous materials.

3/FDTC

Lastly, FDTC says some steel drums are discarded while fibre drums "...may be safely incinerated...." Like a bad magician, the Council's linguistic misdirection is easily recognized. Of course "some" steel drums are discarded. If a steel drum (or any other drum) contains a non-hazardous residue - food stuffs, for example - it may be legally placed in a landfill for disposal. However, if the drum contains a hazardous residue, under ACR standards it must be either processed for reuse, cleaned prior to recycling, or disposed of in a permitted hazardous waste facility. The declaration that fibre drums "may be safely incinerated" is both self evident and unrelated to this issue. It also fails to recognize that there are only a handful of authorized commercial hazardous waste incinerators in the U.S., and the cost for this form of disposal is very high.

In short, the FDTC exemption application should be judged on its transportation safety merits, not on specious claims of environmental friendliness.

ACR members have been the packaging reuse and recycling leaders in the U.S. for over 50 years. Member firms provide valuable collection and processing services to thousands of companies throughout the U.S. that use drums every day. Our industry is extremely proud of the positive contributions we make to the economy and to the environment.

I appreciate this opportunity to comment on the FDTC appeal, and would be pleased to provide further clarification of any issues in this letter.

Sincerely,

Paul W. Rankin
President

CC: A. Smith
L. Bierlein

MYERS CONTAINER CORP.

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May 4, 1993

Ms. Rose A. McMurray
Acting Administrator
U.S. DEPARTMENT OF TRANSPORTATION
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Ms. McMurray:

Recently, we came into possession of an "Appeal of Denial of Application for Extension (10836-N)" submitted by Margaret Hill of the law firm of Winston and Strawn on behalf of the Fibre Drum Technical Council. The appeal contains a number of inaccurate statements and basic falsehoods about the all-steel drum performance versus the fibre drum which demands a response from those in the industry familiar with the facts and the actual performance of the two containers, particularly after the containers have been emptied.

Ms. Hill is, obviously, a lawyer who has been given some background information by her clients in order to present their arguments in the best light, but so much of what she refers to is extremely inaccurate and, in some cases, just the opposite is true.

For example, Page 10 of the FDTC appeal makes certain statements with regard to the so-called advantage of fibre drums over steel drums in the area of recyclability, stating that fibre drums are more "environmentally friendly than steel drums", implying that fibre drums are more easily disposable and present no problems for the user in the area of disposal. Nothing could be further from the truth. The appeal further makes reference

to an embryonic fibre drum collection system which is yet under development and, as we understand it, consists of a single fibre drum manufacturer who has dedicated some trucks to this end. However, it is our understanding that the drums must be completely empty and they do charge the customer a fee for this service. If the emptier must completely empty the drum, then the disposal problem is no less with the fibre drum reside than Ms. Hill refers to as a problem with steel drum recycling, except for the fact that the reconditioners are experienced in this area whereas drum emptiers have no such experience.

On the other hand, a very sophisticated steel drum collection system has existed in the United States for a number of years which in effect covers the entire nation guaranteeing drum emptiers that empty steel drums will be picked up, more often than not at no cost to the emptier. In many instances, the reconditioning industry will buy empty steel drums as they do have residual value when empty and can be reconditioned and reused, often by the same customer.

It is very difficult to get rid of an empty fibre drum. There certainly is no resale or reuse factor in the empty fibre container. Some companies who had previously utilized fibres in their packaging process have reverted back to steel due to the difficulty and cost in disposing of same. In the past in our part of the county, it was necessary to send fibres out of state to be burned at a substantial fee to the emptier. Not only is it a tragic waste of our natural resources to see our ever-reducing forest product used in this manner, but then further natural resources must be consumed to destroy the product after only one usage. One must wonder -- how many drums can be produced from one tree and how many years does it take to replace that tree?

However, in the case of the steel drum, not only does a highly efficient drum collection system exist, but the empty steel drum is used over and over again, which in itself conserves our natural resources and when finally the drum is no longer reconditionable, it is recycled to a steel plant where the scrap drum is used in the manufacture of new steel, again conserving our natural resources.

The FDTC appeal suggests that "steel drums are reconditioned in a more limited manner and have been disposed of in sites that have been or eventually will be placed on the EPA's National Priorities List for Superfund

remediation." This is nothing more than a scare tactic. Actually, almost 30% more drums are reconditioned each year in this country than are manufactured annually (45,000,000 versus 35,000,000). Steel drums, specifically the 17-H drum, have been approved for the handling and containment of certain hazardous materials and, as such, are stored at various sites around the nation as a container for hazardous material. The drum itself is not considered a hazardous material -- only the product contained therein and only those containers have been identified as safe for hazardous materials storage. That, of course, is the reason you will find many steel drums in hazardous material landfill sites. Fibre drums could never be used for a similar purpose.

One other statement contained therein, also on Page 10 states, "While some steel drums are recycled to steelmaking facilities, many are land-disposed when they are discarded whereas a fibre drum may be safely incinerated". This, too, is totally inaccurate as to the steel drum, but empty fibre drums are becoming a serious problem, particularly where the so-called incineration sites and fibre drum collection systems are not available.

Ms. Hill's appeal contains a great number of errors with regard to the empty steel drum and its eventual reuse or disposal, and a great many more when it suggests that a fibre drum is environmentally safe and secure and preferred over the steel drum. Such is not the case.

Obviously, at this point, you know that the writer is associated with the steel drum industry. We are not only manufacturers, but also reconditioners of steel drums in the western United States. Under normal circumstances, we might not have challenged a competitor's posture so emphatically but when it is replete with errors and misinformation, as is Ms. Hill's statement with regard to the posture of steel versus fibre, then we must speak out clearly so as to refute the many incorrect statements and allegations made in the FDTC appeal.

Thank you for your attention.

Sincerely,

John W. Cutt

John W. Cutt
President

Mr. RAHALL. The gentleman from New Jersey, Mr. Franks?

Mr. FRANKS. Mr. Chairman, thank you very much.

Ms. McMurray, welcome. Mr. Roberts just said that in answer to the previous question that the agency must go through a major decisional process as it refines your responsibilities. And I guess for that reason I am fascinated about the interim final rule that you published in February. I would like to explore some of the major decisional processes involved in that interim rule.

You said in your testimony this is a controversial rule because the definition of oil in the act includes nonpetroleum oil such as vegetable oils. I assumed you were talking about the Oil Pollution Act of 1990 in referencing the act. I am new. I wasn't here in 1990, so I don't know precisely what was in that act, but to sort of warm up this morning, I went to Webster's dictionary, and they said "hazardous" is involving or exposing one to risk, and further defined as marked by danger, perilous. It is in that context that I would like to talk about vegetables this morning.

Was the act drawn in such a way as to mandate that your agency develop specific rules regarding the transportation and storage of these food and vegetable oils?

Ms. MCMURRAY. As I understand it, and I will ask Mr. Roberts to clarify if I make a misstep here, the Oil Pollution Act of 1990 amended the Federal Water Pollution Control Act, and the Federal Water Pollution Control Act defined oil of any kind as being a regulated entity. And therefore, we felt required under OPA–90 to regulate nonpetroleum oil, and in consultation with others, including the EPA and the Coast Guard, felt that we were regulating materials that did in fact pose a risk particularly to the marine environment.

Mr. FRANKS. Let me understand this. These types of oils were not only available to the agency to be regulated by actions that you would take, but you felt compelled by the construction of the act that you had to go out and direct the creation of a regulatory scheme around these food oils?

Mr. ROBERTS. Let's break it into two components, and I think we may be able to get through this. The first part is the original act, the Oil Pollution Act, and how it has been interpreted. And a good example is the creation of Section 311 of the Clean Water Act. As Ms. McMurray said, it included oil of any kind and the historic interpretation has been that that includes animal and vegetable oils, or nonpetroleum oils.

This is made evident by rules of the Environmental Protection Agency, specifically 40 C.F.R. Part 112, where their SPCC requirements are contained, spill and containment requirements. In our hearing recently, all the oil people, including the gentleman from New Jersey, acknowledged that they were subject to the SPCC requirements in that part of the EPA regulation.

The origin of the definition of the word "oil" in the Clean Water Act is the same origin our definition came from. So when we developed this rulemaking, it was strongly recommended that we include the words "animal and vegetable oil," because that is the historic interpretation of that part of the old act.

OPA–90 amended the Section 311 of the Clean Water Act. It did not amend the words "including rolling stock and motor vehicles."

So the historic words are still there that always were there that got us into the game, if you will.

It is the same language that got us into the hazardous substances business. It is oil and hazardous substances. So that is how we got into it relative to the definition of oil.

The second part is placing this material in the hazardous materials scheme. This is what we did for hazardous substances, because in that case the Congress ordered us to under CECLA, the Secretary is directed to classify and regulate as hazardous materials all hazardous substances coming from these other statutes. Not oil.

So when we received the delegation to implement, not only the planning requirement, but also the prevention requirement which is part of the Clean Water Act, we opted whether it was a good or bad idea implement this through the hazardous materials transportation system already in place, already well-known and acknowledged by thousands and thousands of State and local enforcement people and Federal, well understood by most of the regulated industry, particularly the carrier industry, but not so well understood or acknowledged as a good idea by, for example, the food industry.

So that is where we are today. And as I indicated earlier, we are working on the extended comment period, the public hearing, where we received lots of very clear messages, and I think that we will be able to come up with an appropriate solution to this problem.

Mr. FRANKS. You indicated, Mr. Roberts, you consulted with other agencies who advised you that you ought to bring these substances under the umbrella of your agency. You have mentioned the Coast Guard and EPA. Can you further illustrate for us the dangers that they pointed to in these products?

Mr. ROBERTS. There are a number of documents, and I am not holding them up to support our decision, but there are documents that talk about the pollution effects of animal and vegetable oils. I do not want to sit here and say, this is a technical basis for our decision. We are required to implement, by delegation, the Oil Pollution Act of 1990, and we could have done that outside the hazardous materials spectrum. We chose at that stage of the process not to do that. That was only our decision within the RSPA. We do not blame the Coast Guard or EPA for that decision.

The decision on what is the definition of oil, they certainly were involved in, that it included animal and vegetable oil, because they administer programs where historically that has been the interpretation.

So there are two distinctions here. RSPA is solely accountable for the decision to put these materials under the hazardous materials regime.

Mr. FRANKS. But you further indicated that those agencies had given you cause to believe that particularly to marine life, these materials could be deleterious to marine life.

Mr. ROBERTS. Yes.

Mr. FRANKS. Can you cite for us some of the incidents in which these products have in fact threatened marine life in any significant way?

Mr. ROBERTS. I am reluctant to do it but—the answer is yes. There was one in Hawaii, there was one up in Minnesota, but these were large discharges, but they do demonstrate the effect these materials can have on bird feathers, for example. Obviously not the same level of aquatic toxicity as petroleum levels, but there have been some events where there were problems raised by animal and vegetable oils.

I don't want to oversell that part, but there are some historic events where that occurred.

Mr. FRANKS. I find it somewhat ironic that last Friday in my State's largest newspaper there is a story by the University of Medicine and Dentistry scientists in New Jersey that these oils actually protect against radiation and radiation poisoning. So obviously there are some qualities to these oils which are not only not injurious but perhaps healthful to an individual when they get measured exposure to it.

You are talking about enormous spills, I gather, where——

Mr. ROBERTS. The historic information where there was significant consequence, they were large spills.

Mr. FRANKS. Mr. Chairman, I will wrap up. There are a lot of things I think this government doesn't do as well as it ought to do, and I think one of our challenges is to better define what we can do and seek to improve it.

This is in my judgment, a nonexistent problem. Given the compelling issues which the agency is asked to deal with, why you would want to get into this, I just can't understand.

So I would like to ask to add my voice to those who simply say, let's regroup and focus our energies at really protecting the public from legitimate hazardous materials. There is enormous public confidence placed in your agency, and to get into these materials which would simply cost jobs and cost consumers more money just seeks to solve a problem I don't think is apparent to many people in this country.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Franks.

I want to ask a couple more questions before recognizing Representatives Petri and Applegate for a second round.

In response to a question that was raised by my colleague from Ohio, Mr. Applegate, Ms. McMurray, you said you are aware of a project in Houston, Texas that is a joint effort between the FRA and the Port Terminal Association to improve emergency response personnel at railroads. Do you believe this project comports with the recommendations that we undertake a pilot project utilizing railroad? Do you believe that this project comports with the TRB's recommendations that we undertake a pilot project utilizing a railroad?

Ms. MCMURRAY. I think we can point to it as a demonstrated initiative that would, again, bear information that dovetails with the conclusion that the department begin a limited startup of using automated information. I think at a minimum the result of that review will be fodder for any additional action that the department might take in considering the recommendation of the NAS.

Mr. RAHALL. So this could serve as a basis for an expanded pilot project?

Ms. MCMURRAY. I believe so. But I would agree with Mr. Applegate's view that to make it a true pilot that has more applicability, that the motor carrier industry be included in any additional follow-on work to such a demonstration.

Mr. RAHALL. Right. I agree as well.

Let me ask you one final question on Section 29. That requires the Secretary of Labor to issue regulations to require any employer who receives a package or vehicle containing hazardous materials to retain marking, placards, labels, and other information required by the hazardous materials regulations, until the hazardous materials have been removed. These investigations are to be released in consultation with the DOT and the Department of Treasury.

Can you give us a status report on the implementation of this Section 29?

Mr. ROBERTS. I reviewed a draft of OSHA's rulemaking some months ago, Mr. Rahall, and heard nothing more of it. Recently we sent a letter to the Department of Labor asking them the status of this action and requested they respond directly to a Member of Congress relative to his inquiry on this point.

So we have followed up on this recently. It has been many months since I have seen a draft of the rulemaking that OSHA had prepared on this topic.

Mr. RAHALL. Thank you.

Mr. Petri?

Mr. PETRI. Just a matter of information. Do you regulate shipments by other government agencies, or is it only by the private sector?

Mr. ROBERTS. Our regulations apply to shipments by all government agencies when they introduce hazardous materials into commerce. One of our largest regulated customers, if you will, is the U.S. Department of Defense, and also the Department of Energy. We work with them constantly relative to their transportation programs.

Mr. PETRI. How do you work the fines and enforcement part of it?

Mr. ROBERTS. Well——

Mr. PETRI. It strikes me that that is sort of the flaw in government regulating, as is happening in Eastern Europe. There were wonderful environmental laws but there was no real way of penalizing people the way you can when you take away the property of somebody who is a private citizen.

Mr. ROBERTS. The answer is simple, and it is in the act as recently passed. The definition of a person includes government, and then it says except for section so-and-so of this act. And the sections of this act that it excludes are the enforcement sections.

So there is no case where there could be the Secretary of Transportation versus the Secretary of Defense, for example, in a criminal proceeding or civil proceeding. They are exempt from the enforcement provisions of the act.

That doesn't mean that Federal employees are free and clear of responsibility in the Department of Defense. The individual employees, should they willfully commit a violation of our regulations, are subject to criminal penalties. We can take action against an

employee, if the employee willfully violates our regulations, not the agency, but the employee of the agency.

The Department of Defense has written regulations consistent with our regulations on training of Department of Defense employees. It is in their internal regulations. They are aware they are subject to our new training regulations that came out, and they must have written documentation of that training given their employees.

This is important because it establishes the knowledge base of the Federal employee as to what the Department's requirements are should it ever be necessary to bring an action against that employee. And we constantly emphasize to the other Federal agencies, for example, what they take aboard commercial passenger aircraft, they are subject to the same rules as any other person getting aboard that aircraft. They better not take hazardous materials in their luggage in violation of the Federal regulations.

Mr. PETRI. And you have actually fined or prosecuted employees of the Federal Government?

Mr. ROBERTS. There was a case some years ago of a Federal employee that took material on a commercial aircraft and a penalty action was brought against that employee. The agency settled with the Federal Aviation Administration by adopting some process that involved a very elaborate training program to be established by that agency for its employees.

Mr. PETRI. Thank you.

Mr. RAHALL. The gentleman from Ohio, Mr. Applegate?

Mr. APPLEGATE. Maybe this will finish it up. The fire fighters later on are going to talk about other things, about training, emergency responders, and I think it is a very important test of this thing, making sure responders are going to have the necessary training to be able to do what is necessary to come upon an incident or accident and also be equipped to deal with it.

It is very expensive. Somehow I think the government is going to have to help these local communities to find a way to do that.

Let me ask you this in reference to what Mr. Collins asked you about, about the penalties, and with regard to the loss of the placard. And I think that you had mentioned that the maximum potential fee or fine is $25,000 a day, and down to a minimum of $250, and I assume that was established by Congress?

Mr. ROBERTS. Yes.

Mr. APPLEGATE. And I was wondering about how often either one of those are imposed. Forget about the fact that the NAS says that 33 percent are in error, and the Office of Technology Assessment says that there are 50 percent, and I am not sure just exactly how many of those are missing but I assume that whether they are missing or whether they are in error, that would subject them to those fines, but that would, according to taking your 10 percent, would amount to something like five trucks a day and maybe a train every other day.

How often is this imposed, and how much money is collected, and do you recall what the rationale for the difference between $250 and $25,000 a day, maybe you can fill me in a little bit on that.

Mr. ROBERTS. Well, first of all, you have to break this into two components. First is the Federal penalty system under the Hazard-

ous Materials Transportation Act. The penalty under the Hazardous Materials Transportation Act ranges from $250 to $25,000. It has to do with the size of the entity that committed the violation, the ability to pay as specified in the statute, the culpability, a number of things have to be taken into account before the penalty is levied.

If I were to give you an estimate of what the current penalties are, I would say they are in the range of $1,500 to $2,000 per violation. That is just without me looking at any documents, to give you an answer.

But more importantly is what is really happening. There is a deemphasis of this type of activity on the part of the Federal inspection force–I am talking about highway. Most of the program now is managed through the MCSAP program, the Motor Carrier Safety Enforcement Program.

Several years ago, about 13 percent of that initiative was devoted to hazardous materials enforcement, primarily in the roadside inspection program. The current funding level, I believe is in the area of $60 million a year, coming out of the Highway Trust Fund. So there is a fair amount of money going to the States to operate their MCSAP programs under the supervision of the Federal Highway Administration. One of the two major regulations are shipping documents and placards relative to those activities.

The data network called Safety Net is up and running in a number of States and hopefully it will be complete some day. Then we will be able to, at a snap of the finger, answer the question such as, what were the enforcement cases, what was the dollar amount. We are not there. It is currently a manual system.

Placarding and shipping paper enforcement is getting more intensive even as we speak. As Ms. McMurray mentioned, the nationwide ROADCHECK program begins today, for the next few days, and it is a big program.

Mr. APPLEGATE. Okay. That is all I have got.

Mr. RAHALL. Thank you.

Mr. Roberts, before you leave, let me just thank you for–I am sorry, the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. In regards to Mr. Franks' question from New Jersey, you mentioned that there have been two incidents of vegetable oil spills that were rather large spills. How large is large?

Mr. ROBERTS. I didn't bring any material on this topic, but the one that I recall was over a million gallons, and I earlier said we are not talking about railroad and highway size quantities. They were very large spills. And they happened many years ago.

That is the other point. How many years ago? About 20 years ago. So they are not contemporary events. That was my point earlier on.

Mr. COLLINS. What is the average number of gallons per transport load?

Mr. ROBERTS. Well, if you are talking about a railway tank car——

Mr. COLLINS. Highway.

Mr. ROBERTS. Highway, well, they vary in size from two axle bobtail trucks to a tractor semi-trailer, and a trailer can contain up to

10,000 gallons, in that range. Eight thousand five hundred gallons would be quite typical.

Mr. COLLINS. Quite a difference.

Mr. ROBERTS. Yes, sir, no question about it.

Mr. COLLINS. We have some figures on the fines levied, hazardous materials enforcement actions by the administration, 1990, 1991. In 1991, the FAA civil penalty actions completed 64, average penalties, $15,418. The Federal Highway Administration completed 160, average penalties, $3529. The FHA, the average penalty, $6595. The RSPA civil penalty actions completed, 125, average penalty, $5168. The USGA, 142 penalties, average, $2,027.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you.

Our next witness is Mr. Barry M. Horowitz, President and CEO, MITRE Corporation, and Chairman of the National Research Council Committee for the Assessment of a National Hazardous Shipments Identification System

Mr. Horowitz, we welcome you to the subcommittee. Your prepared testimony will be made a part of the record as if actually read at this point. You are encouraged to summarize. You may proceed.

TESTIMONY OF BARRY M. HOROWITZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE MITRE CORP., AND CHAIRMAN, NATIONAL RESEARCH COUNCIL COMMITTEE FOR THE ASSESSMENT OF A NATIONAL HAZARDOUS SHIPMENTS IDENTIFICATION SYSTEM, ACCOMPANIED BY JOSEPH R. MORRIS, SENIOR PROGRAM OFFICER, TRANSPORTATION RESEARCH BOARD

Mr. HOROWITZ. With me is Joe Morris, senior program officer at the Transportation Research Board. They are a part of the National Research Council, which is the operating agency of the National Academy of Sciences, who of course did the study that we are going to talk about.

The first thing I wanted to say is that the committee consisted of a great number of experts in the relevant areas, and the members have lots of interest in this subject, so it is a hard work study. We studied the feasibility and necessity of a central reporting system and computerized telecommunications center for receiving and retrieving data concerning all daily shipments of hazardous materials that could provide information to facilitate responses to incidents involving these materials in transportation.

To conduct the study, the committee first needed an understanding of the information requirements of the responders, and the adequacy of current practices for meeting these requirements. We found that existing programs for compiling data on the frequency and circumstances of incidents were not adequate to support evaluations.

To fill that gap, we took it upon ourselves to analyze 125 incidents, and where possible, we actually interviewed emergency responders who were involved in this set of incidents. Another aspect of our study was a set of interviews with shippers and carriers to learn about their information systems, how they maintained them,

and how they might be affected if they were integrated into a national system.

So first, regarding the necessity for improved information, we found that responders could not obtain information that they sought about the presence or identity of materials, or they experienced significant delays in obtaining it in about 25 percent of what we called consequential highway incidents and 10 percent of consequential rail incidents. By consequential, we meant incidents where somebody got injured, property was damaged, evacuation occurred, or there was major traffic delay or something of that sort.

It is important to note that while the information was not there in these percentage of cases, this didn't necessarily cause the adverse consequences of these incidents.

What are the causes of the adverse consequences is a complex question. For example, we said that the required shipping documents or placards may be absent or in error. They may be destroyed or inaccessible. Or they may actually be in compliance with regulations but nonetheless fail to have the information that is needed at the time.

And often because of the experience of the responders, even when the information is good, they don't trust it, because of the number of cases where it is not good. So we found lack of information at incidents has delayed responses and increased risk, and improved information would potentially reduce the adverse consequences of accidents and incidents that occur, be they injuries, property damage, evacuations or other effects.

However, most of these costs are not the results of poor information. Improved information would have a fractional impact on the overall cost of the cases involving lack of information. However, in addition to its value in the more routine events that occur, improved information might be important in some catastrophic event that is yet to occur where in fact the information could be crucial, and one has to account for that in the overall assessment.

Because the causes of information failure are complex, our committee concluded that reducing the frequency of failures would require extensive changes in regulation, enforcement and training, and that while automation is important, it must be looked at as a complement to these other things, not a substitute. But an important complement.

Automation systems could help responders deal with complex situations better by organizing the information better. It could strengthen enforcement by creating a monitoring mechanism that doesn't exist today, or methods of access to data that are easier for the human beings involved using the information.

So learning how to use technology is an important aspect of this whole thing, and led us to talk about approaches which require experimentation and a sequential process of introducing new capabilities and measuring their value as we add them on.

Now, we were asked about feasibility, and regarding feasibility, the committee concluded that an automated information system for emergency responders could be reliable and cost—effective only if it were built on a base of the shippers' and carriers' own information resources-the very resources they use for tracking their inventory and shipments, and of course these vary in sophistication, and

small firms have very limited access, in most cases none at all. So the current state of affairs is mixed in terms of the use of such technology.

I will summarize the committee's recommendations. First, we believe that Congress and the responsible Federal agencies should plan and carry out a program to improve the existing system which provides information to responders at hazardous materials transportation incidents. The program should include appropriate measures to apply technology. Also, it should include reforms in regulation, enforcement, and training, and have an evaluation of the program that tells us how we are doing at solving problems.

Second, DOT should immediately undertake one or more limited startups of automation systems. An information system for rail shipments we believe would be a practical starting point. This limited startup would give emergency responders access to rail industry car tracking systems which are the result of major industry investments.

All major railroads provide current information to shippers describing the location and recent movements of railcars carrying their shipments. These systems could be modified to provide information about car contents to emergency responders.

Such a prototype would provide an experimental setting for resolving many of the organizational, technical, and cost-effectiveness questions that we need to answer as we design an information system. We estimated the cost of a startup system evaluation involving one railroad would be about $4 million and that this could be expanded to a trial of a nationwide system for rail for an additional $3 million.

The large rail industry investment in information systems that has already taken place would provide a major leveraging of the dollars spent on this limited startup. If evaluation of the trial showed that such a system was worthwhile, this could lead to a useful capability within just three years.

To address deficiencies in data about hazardous material incidents, the agencies that maintain such data should coordinate to ensure data are collected uniformly and fill critical knowledge gaps. DOT should establish a monitoring capability that allows it to determine whether its regulations intended to provide information at incidents are in fact working adequately.

Next, to correct the failures in the existing information system that we observed in our incident case studies, the committee recommends that DOT and other responsible agencies should form a plan of action to alleviate the various categories of failures we identified through changes in regulation, more effective enforcement, and support for more training of emergency responders and inspectors.

The committee report proposes possible components of this action plan, but we didn't have the resources to evaluate all of the possible things one might do.

Finally, the committee recommended that the government not attempt to implement a system such as the originally proposed national central reporting system, that is, one that entailed immediate universal application of a requirement for shipper and carrier filing of vehicle content information in a central database.

We believe there is no sound basis for defining the performance criteria for such a system, and what reliability would be needed in such a system to get the improvements desired. There would be no opportunity to allow ongoing evaluation to guide implementation, whereas phased implementation of course would allow this. And the system wouldn't be designed to make maximum use of the existing shipper carrier and responder capabilities. Instead, we believe that the staged approach recommended is the best way to achieve the improvements that everyone would like to see come about.

That concludes my statement. Joe and I will be pleased to answer questions that the committee may have.

Thank you.

Mr. RAHALL. Mr. Morris, do you have a statement?

Mr. MORRIS. No, sir, I do not.

Mr. RAHALL. Mr. Horowitz, I have two questions for you. On page 14 of the study you indicate that the cost of rail startup programs is $4 million. This would involve one railroad and 30 emergency response agencies.

How would that program operate, and did you receive any data for similar startup programs in the trucking industry?

Mr. HOROWITZ. Well, I will answer those two separately. What we imagined is that the DOT would organize the railroad and the set of about 30 or so emergency response groups in the communities along the path that the railroad travels to create a system demonstrating how information would be transported to the responders under duress, and an evaluation process for seeing how it worked in practice.

We even envisioned that the evaluation process might purposely create exercises to see—surprise exercises to see what happened when people didn't expect it, since the number of incidents is rare and over a period of two years you might not get that many situations that created the kind of circumstance that we are concerned about.

And a fair fraction of the investment would go into data analysis so that we really understood the reliability of an information system that was based on technology versus the current system which is based on placards and other types of human interaction. So that is how we envision the program.

Now, as far as trucks were concerned, we recommended you could do comparable things with electronic data interchange with trucks, but believe that an integrated truck and rail experiment as the first step could lead to confusions, confusions because of the state of affairs that routes, which are fixed in a rail system, are not fixed in the truck case. The number of databases that you have to deal with in the trucking industry are much more diverse, so the government would have a more complicated information problem.

So we felt the ability to get concrete, sure information in the rail case made it a worthwhile thing to do and from which to build to the next stages with a lot of confidence. You might do a truck thing of a similar nature, but you can expect you wouldn't get as concrete a set of data out of it.

Mr. RAHALL. So you don't recommend doing them both on the same project?

Mr. HOROWITZ. Until the initial information from the rail case was sufficiently confident that you could then add the extra confusions of integrating the two.

Mr. RAHALL. Within a loan to have a truck project, what would you estimate the cost to be?

Mr. HOROWITZ. We really didn't do enough of an analysis to answer that question. What one would have to do is first decide how many trucking companies would get involved, and then you would have to look at their actual information systems, how different they are, and what technical work would be needed to integrate them. This is a cost that was rather low in the case of rail, because we talked about a single company that had a large system in place.

So that is an evaluation one would have to make, the amount of technical work. The data collection work would be much larger as well, since the routing and the emergency response units involved would be more diverse.

So I really can't answer the question of what the delta cost would be, but it would be larger, and someone would have to do an evaluation of what that is.

Mr. RAHALL. Later today the firefighters will say that the placard and manifest system has proven to be a dismal failure and no amount of minor adjustments will make it work. The witness suggests that the current system be relegated to the scrap pile as soon as possible.

Do you agree that the current system is beyond repair and it should be scrapped?

Mr. HOROWITZ. I would say I don't know. I think that for starters, you would have to supplement the current system, and as you got better information collection about how the more automated system worked compared to the current system, you might end up deciding to do that.

We said we thought there were error rates, as Congressman Applegate pointed out, that were fairly high, 25 percent and 10 percent for truck and rail. And the assumption is that an automated system would be better. But I think prudence would say you would first want to demonstrate that to yourself since human error and other kinds of errors could enter in that you don't anticipate, but once you got a system ironed out that brought that about, it is conceivable you could do a replacement.

Mr. RAHALL. Thank you.

The gentleman from Wisconsin?

Mr. PETRI. Thank you, and thank you for your work on this commission.

I guess I just have a couple of questions I am curious about. We rely on government regulation for safety, but there is a whole private system of regulation called the insurance industry. Actually I talked to my people involved in business and they trust the insurance inspector more than the OSHA inspector, because they are working together to try to get their risks down and lower their claims and so on. It gives some flexibility and it has sort of a real world test to it and orientation.

Did you explore this with people in the insurance industry? It might get around some of these things about fiber drums and whether they are safe or not if claim experience were taken into

account, cost and safety and the tradeoffs that are made, and if you just require insurance or look at working at devising regulatory schemes that can supplement the flexibility of the insurance approach to it.

Did you consult with the insurance industry, or others who are involved in paying for hazardous materials when the hazard turns into a casualty?

Mr. HOROWITZ. No, we did not, but I will say that—and perhaps we should have, but I will say that a number of the consequences that we did look at, such as stopping traffic on a road for many hours until certainty was achieved, are not the sort of things that are covered by insurance companies, but are, of course, public interest issues.

So it is probably not a complete overlap, and we really didn't look at that to make a judgment of just whether the overlap is important enough to be a major consideration. We did not do that.

Mr. PETRI. I am just curious, since we are kind of groping to figure out how we can use technology and we can use our experiences to improve public safety. There may be ways of learning from people who are trying to manage risks right now, or build on that or require it if we don't already that people have insurance in certain circumstances and let it go at that if that will involve private regulation.

That might be more focused because their own checkbooks are involved, and government regulation often ends up where we regulate to a rule rather than to a real risk, sometimes.

Did you look at other countries, what they are doing in this area? Were there lessons that you learned or mistakes that we can avoid?

Mr. HOROWITZ. Yes, we did. Actually we got involved in looking at things that Canada is doing. And did we look at Great Britain as well?

Mr. MORRIS. Some European proposals are for demonstrations having to do with trucks in the context of systems that are like IVHS systems that the U.S. is talking about also. But as far as I know, the European proposals are still in the proposal stage and are not under way even as pilots or demonstrations yet.

Mr. HOROWITZ. The main thing I would say that I got out of the look at the foreign things was that everybody now is looking at the opportunities that technology can afford, and the question really becomes how organizationally one can institute the most reliable, cost-effective way to exploit technology given the investments the companies are making anyway. So I think the recommendation we made is pretty much in line with what other people are thinking about.

Let me make a gratuitous remark about insurance companies. This is off this subject, really, but I have had a lot of interest in other subjects such as what is the value of securing a computer system so that somebody can't steal data from you and whether insurance companies do anything there. And from what I have gathered, that community is not yet to that level of sophistication. So I doubt they would be very far along in dealing with a relationship of technology to insurance rates.

Mr. RAHALL. Thank you.

The gentleman from Ohio, Mr. Applegate?

Mr. APPLEGATE. Well, first of all, let me just say, I want to thank you, Mr. Horowitz, for the work that you have put into your study, and for keeping in touch with me on it, letting me know how you are doing. And although I don't necessarily agree with all your conclusions, which I had already stated, but nevertheless I think it points out clearly that really something must be done, I think, to improve the system, because there are mistakes out there.

I wanted to take a look with regard to the startup program, as it relates to maybe how or what your final conclusions may be, you say that immediate and universal application for a shipper or carrier, real-time filing of vehicle content information in a central database.

Are you just saying that there should be no kind of a system whatsoever in place? Is that what you are saying? Or are we talking about some kind of a support system that could be utilized eventually on a nationwide system, nationwide basis?

Mr. HOROWITZ. We did not mean to really make a universal statement that there should not be a system in place. We are really talking about the style in which it was implemented, a phased, sequential approach versus a single-step approach.

Now, we also, though, would point out that there are many ways in which one can access data besides having a central repository. You could create a system that went right to the databases of the shippers or carriers, for example, or they could set up a middle person—or middle persons, State by State, for example, you might imagine, from which you could access data. And so there is a very large variety of ways to integrate the data eventually that would depend on issues of cost, security, responsiveness, and many other things. And technology is there, really, to make the choices fairly open. That is, there is a lot of different choices and they are probably quite economically competitive with each other.

So we are really saying that the design of this system shouldn't be forecasted as being central to start with, and the implementation should be sequential. But not meaning to say there shouldn't ever be a system in place.

Mr. APPLEGATE. You think the idea, obviously, perhaps it is cumbersome from your standpoint, because of cost, or do you think that the idea I am proposing is good? The idea has to be a good idea, but that perhaps the cost of it may be exorbitant? Is that where the direction comes from?

Mr. HOROWITZ. The idea of a central system?

Mr. APPLEGATE. Yes.

Mr. HOROWITZ. No. I think that in the end the costs of creating varying kinds of systems would be competitive with each other. The question of whether the suppliers of data, the shippers and carriers, would have to build a separate system than the ones they otherwise had becomes not only an issue of cost but reliability.

I think a lot of experience shows that if you take a system that a provider of data uses for important things every day, and use it for backup, you will get reliable data. If you have him build a separate system for backup only, you will get a system much less reliable because it is exercised and used much less frequently.

So I think you could have a central system, you could have one that does employ the investments being made in the day-to-day

systems of the shippers and carriers. And I think it would be of the same economic stature and cost as a distributed system. It may not be as responsive or reliable. That is what I think you have to look at rather than cost being the driving issue.

Mr. APPLEGATE. There are a lot of different kinds of central systems that are out there today. Have you looked into any of the kinds of systems that are available?

I know we looked at a lot of different new technology just since we even got involved in this thing. It just absolutely boggles your mind to see the advances that have been made as compared to when we first started on this idea, which seems very archaic by comparison. Today you have all of this available to you. And I don't know whether your committee actually looked into the different kinds of technology that is available.

Mr. HOROWITZ. Yes, we did, and members of the committee, including myself, have spent their entire career in information system technology and are well aware of the rate and the quantity of the use of this technology.

But I think—I will repeat the point I made earlier—a central system that is utilized for day-to-day, ongoing business use, has a reliability associated with an entire work force depending on it day-to-day for everyday use. And that is somewhat different from something that is used sporadically for special events.

And so one has to put special care into how you design a system to bring the reliability of a special use capability up to the reliability we are used to in a day-to-day, everyday system.

Mr. APPLEGATE. When you are talk about day-to-day vis-a-vis the sporadic use——

Mr. HOROWITZ. The difference is, you might have a company that has an incident occur once every two or three weeks or four weeks involving the use of tracking hazardous materials. So the workers who get involved in doing that, and are the ones who are expected to put in data and see it all work, only are tested, so to speak—the suppliers of data are doing it every day, but the response to whether they did it accurately or not only happens on occasion. So in that sense building on databases that are used regularly all the time, you have a greater chance of reliability.

So that is really the only point. And the system could be central. I don't mean to say that it couldn't be central. But I think the choices have to be compared to each other as to how centralized versus distributed.

Mr. APPLEGATE. We were looking at the idea of allowing them to have their own basic systems but to interface with sort of at least some kind of a central system. Do you think that sounds like it would have any merit at all? It sounds like what you are saying, it has potential.

Mr. HOROWITZ. It has potential but there are other ways can you do it. I think you have to look at them in a competitive fashion and see what is best.

Mr. APPLEGATE. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Horowitz, who would enter the data on a hazardous load, the shipper or the carrier, as it is loaded, under the theory we are talking about?

Mr. HOROWITZ. Well, you could imagine doing either, but we would imagine that the carriers would do it, because many of these shipments have stop-off points, so they are not—it is not as if a load of shipping goes from A to B and that is it. There is A to B to C to D and there is drop-off points. So it is logical to expect that the carrier would in the end be accountable for these middle data entries, and therefore probably logical to have them do the start and finish as well.

Mr. COLLINS. How about on the unloaded status, the carrier or the recipient?

Mr. HOROWITZ. We actually only dealt with the subject of tracking in transit, so our study did not look at management of inventory and pre-transport and post-transport.

Mr. COLLINS. I know a lot of industry will receive a cart load of material that sits on the sidetrack of a week or so. Who is going to take that material out of the process?

Mr. HOROWITZ. That is why I said we believe that the person doing the carrying would probably have to make these data entries as they unload and load things rather than the recipient or the supplier.

Mr. COLLINS. How many loads of hazardous material do you estimate is transported every 24 hours?

Mr. HOROWITZ. We have seen lots of indication that uses the number half a million a day, and I have seen nothing that one can say is more reliable or less reliable, so that is probably a good peg point, half a million a day.

Mr. MORRIS. The committee didn't verify that number.

Mr. COLLINS. How much would that be by truck?

Mr. HOROWITZ. A good fraction of it, a large fraction.

Mr. COLLINS. And if it was loaded and unloaded in a day, that would be twice that?

Mr. HOROWITZ. It might be two or three—the 500,000 accounted for the drop-offs and pick-ups. And I don't remember, but I think they talked about two or three interim stops for a good fraction of the people carrying materials.

Mr. COLLINS. What type of system would it take to see the type of data?

Mr. HOROWITZ. The receiving, I don't think would be the problem. It is the supplying of the information that would be the problem. You can have many, many kinds of systems that receive it.

But you could imagine a system of having a bar code reader, bar codes on the shipments, and a transmitter on a vehicle that would, when the shipment was taken off the vehicle, look at it, read it, and it is automatically recorded, so that the operator has a minimal responsibility of just bar code reading and not be an enterer of data.

You could imagine less fancy systems that put more reliance on the truck operator, like you might have to make data entry or you might have to make a phone call. So this is how you would have to look at it. How reliable can we make it, how capable are the peo-

ple who actually do the work to do it, and then compare it to the current system and see how much better it is.

Mr. COLLINS. That is what you folks see on the railroad?

Mr. HOROWITZ. Yes, we felt the railroad people have gotten themselves in control. There would be very little experiment as to whether they can operate the automation. So we would only be focusing on the emergency responders.

Once we had them well understood, we felt you could then augment to a wider audience and bring in more of these types of confusion factors that I discussed with greater confidence, that you at least knew where you were and how far could you go with what level of confidence.

Mr. COLLINS. That is all I have, Mr. Chairman. Thank you.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard?

Mr. POSHARD. Mr. Horowitz, you may have answered this, I came in a little late, I am sorry, but if I were an emergency responder to a crisis situation, hazardous materials, what would be some of the reasons I wouldn't trust the information that I am being given?

You indicated in your testimony that many of the emergency responders indicated they didn't trust information they were given. Why wouldn't they?

Mr. HOROWITZ. Well, for one, we have seen data that has been collected by various people that says that if you just spot check the information that is on the manifests or on the placards, that they are in error at fairly high rates, 25 percent in the trucks, 10 percent in the rail. So there is just that fact.

But in addition, there is ambiguous information, like if you have a mixed load of dangerous materials, you will get a dangerous sign. And so there is an ambiguity as to what that means.

In addition, the emergency responders have a wide variety of training, and many of them are volunteers, and so just their own experience with chemicals and what could happen is quite variable. So I think a mixture of their own knowledge, the error rate in the system, the ambiguity of information in the system leads to this problem.

Mr. POSHARD. In your investigation, did you encounter incidents where there was harm done to either the emergency responders themselves or the population around which the spill took place, or whatever it was?

Mr. HOROWITZ. May I take a minute to tell you——

Mr. POSHARD. Yes, sir.

Mr. HOROWITZ. We looked at 125 incidents that were called consequential. Consequential meaning something happened, not death, but injury or another consequence that would be noticeable, like you evacuated a community. And these were from the National Transportation Safety Board or a database in California where the responders send in information when they respond to a case.

And we looked at them in great depth. And we did find that in percentages of these cases, there were issues associated with information. Not when the information lack may have caused the incident, there was nothing quite that aggravated, but where the information caused either delay or uncertainty that mattered.

Mr. POSHARD. I know you are recommending that the process that is developed here center around regulation and training and

that sort of thing, not necessarily in opposition to Congressman Applegate's plan, but in conjunction with it.

But I am wondering why, since 25 percent of the incidents that you investigated were highway related, you are recommending that we begin with a rail study. Is that a logistical thing or a management thing, or does it have to do with money?

Mr. HOROWITZ. No, it is really—I would consider it a technical thing. That is, if you are designing a technical system, which is what we are talking about, you would like to do that with the greatest amount of control and certainty as you start to build it up, and to sequence your investments in it, in keeping with your assured knowledge or relatively assured knowledge. And our feeling was that the rail system offered a good what I would call table setter for how to get systems started, and then with great confidence move into much more complicated factors in designing a system.

Mr. POSHARD. You could extrapolate in the rail process then to the highway; you wouldn't be reinventing the wheel for the highway? The rail is more manageable, I understand that, but would you have to start all over, then, if you began a highway system?

Mr. HOROWITZ. I don't believe so, and in fact my feeling is that the key issue you would have to deal with in the highway is you would be integrating a diverse set of database systems that people already own, and they are what they are.

So one of the problems of having an approach which says we will integrate systems in place is you don't have full design flexibility, and the government or whatever agency created the monitoring system would have to become an integrator of a set of systems that they don't fully control.

And so there I think we would take a look at how diverse these systems are. I do not know how diverse they are, how complicated the integration would be. And I think as Congressman Applegate pointed out, as early as possible provide some approach to keeping it manageable before it gets out of hand, but you would have to first look at where it stands to start with before you understand just how complicated it is.

But my assumption is it is still early enough now that it probably wouldn't be out of range, so to speak, in that you would have to reinvent the wheel after you do the first thing.

Mr. POSHARD. Twenty-five percent highway and 10 percent rail seems pretty significant to me, you know, in terms of human life. Under the best circumstances, would you venture a guess as to if your committee's recommendations or your study's recommendations were undertaken, what would we draw that down to, if the process was changed and was successful?

Mr. HOROWITZ. I looked at it in a different way. I looked at it by saying, if the automation system could not improve it by a factor of 10, the confidence of the emergency responders would probably not change enough to change the way they act.

So my feeling is that the sequential process of evaluation should be done to force a factor of 10 improvement, so that we can really get a confidence change and therefore a different way in which people use and operate the system. So my feeling would be the answer is a factor of 10 by design.

Mr. POSHARD. Thank you, sir.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you very much. We appreciate your testimony.

The subcommittee will now hear from a series of three panels. First is composed of Mr. Robert Messemer, the Director of Distribution, Rhone–Poulenc, Incorporated, Shelton, Connecticut, and a member of the Distribution Committee, Chemical Manufacturers Association, and accompanying him will be Robert L. Temper, Manager of Transportation, Mallinckrodt Specialty Chemical Company, Chesterfield, Missouri, and Chairman of the Technical Regulations Committee, National Industrial Transportation League.

Gentlemen, we welcome you to the subcommittee. Your prepared testimony will be made a part of the record. You are encouraged to summarize. You may proceed.

TESTIMONY OF ROBERT MESSEMER, DIRECTOR OF DISTRIBUTION, RHONE-POULENC, INC., SHELTON, CT, AND MEMBER OF THE DISTRIBUTION COMMITTEE, CHEMICAL MANUFACTURERS ASSOCIATION; AND ROBERT L. TEMPER, MANAGER OF TRANSPORTATION, MALLINCKRODT SPECIALTY CHEMICAL CO., CHESTERFIELD, MO, AND CHAIRMAN, TECHNICAL REGULATIONS COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. MESSEMER. Good afternoon, Mr. Chairman. I started out with good morning, but I guess it is afternoon.

I am Robert Messemer, Director of Distribution and Purchasing for Rhone-Poulenc Basic Chemicals. Rhone-Poulenc is the U.S. subsidiary of the French based Rhone-Poulenc. I am representing the Chemical Manufacturers Association. CMA appreciates the opportunity to present the chemical industry's view on reauthorization of the Hazardous Materials Transportation Act.

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. As major shippers of hazardous materials, CMA member companies are strongly committed to the safe and efficient transportation of chemicals.

The Hazardous Materials Transportation Uniform Safety Act of 1990, which reauthorized the HMTA, established an excellent framework for strengthening the existing regulations. The law requires a consistent foundation for employee training, sets the stage for improvements to the hazardous materials identification system, and helps establish a system for collection and disbursement of funds for emergency response training.

The law also establishes a structure for States to designate highway routes and a mechanism for increasing consistency in State registration and permiting programs. CMA supports all of those provisions of HMTUSA.

Before Congress makes any revisions to the HMTA, CMA believes more time is needed to complete implementation of HMTUSA and to evaluate it. Therefore, we support the Chairman's bill, H.R. 2178, which is a clean reauthorization of HMTA.

The HMTUSA required DOT to contract with the National Academy of Sciences for a study on the feasibility and necessity of a central reporting system and a computerized telecommunications

data center for tracking all hazardous materials shipments. The study was recently completed and CMA generally concurs with many of its findings.

As the report says, a central reporting system for all hazardous materials shipments would be unlikely to function as intended or to produce benefits sufficient to justify its cost. And DOT should not attempt to implement such a system.

We also agree that more aggressive enforcement, better training of responders and some regulatory changes might significantly reduce any problems with the existing communications system.

HMTUSA also requires DOT to improve rulemaking on improvements to the hazardous materials identification system. CMA has offered DOT several suggestions for improving the placarding system and we look forward to completion of this important rulemaking.

CMA supports the training regulation promulgated by DOT which sets up the consistent structure for establishing necessary training programs. To help companies train their employees, CMA has developed training programs which are available to both member companies and the public.

CMA also supports the Federal registration program that is about to enter its second year. We do, however, have one concern with the registration program. DOT has interpreted HMTUSA to require registration of foreign shippers and transporters. CMA believes DOT has some discretion in this area and would like Congress to clarify its intent for this provision of the HMTUSA.

Appropriate regulations can promote safe and efficient hazardous materials transportation. But independent and voluntary industry activities are also essential.

CMA is involved in many initiatives such as Responsible Care, a voluntary industry initiative designed to continuously improve performance in health, safety, transportation and environmental quality.

CMA actively assists emergency responders by training programs. Our lending library loans audio-visual materials to responders at no charge.

CMA is also committed to assisting emergency responders through CHEMTREK (Chemical Transportation Emergency Center). For over 20 years, CHEMTREK has provided a 24-hour toll-free telephone service which provides timely information, technical guidance for mitigation of both hazardous and nonhazardous materials releases. It can also establish a communications link between the scene and the shippers of the materials involved.

CMA has continuously upgraded CHEMTREK. TRANSCAER stands for Transportation Community Awareness and Emergency Response. In this program, industry is working with citizens to develop mutual understanding about the hazardous materials moving through their communities and providing guidance and training to emergency responders. TRANSCAER sponsors include CMA and seven other trade associations and is supported by the National Governors' Association.

HMTA, as recently amended by HMTUSA, addresses the key areas affecting the safe transportation of hazardous materials. But several provisions are still being implemented. CMA believes these

activities should be allowed to progress while all involved monitor their effectiveness.

We recommend that Congress treat HMTA as a work in progress, and reauthorize the legislation without revision. The regulations developed under HMTUSA will enhance hazardous materials transportation safety. But voluntary industry activities are also a key to success. These initiatives, coupled with well-thought-out regulation and aggressive enforcement, will foster a safe and efficient hazardous materials transportation system.

In closing, I would like to extend an invitation to you, Mr. Chairman, and to Members of the subcommittee and staff to visit the CHEMTREK facility here in Washington to see how it operates and to experience the value of this important resource to emergency responders.

Thank you.

Mr. RAHALL. Mr. Temper?

Mr. TEMPER. Good afternoon. My name is Robert L. Temper. I am Manager of Transportation for Mallinckrodt Specialty Chemical Company in Chesterfield, Missouri. I appear today on behalf of the National Industrial Transportation League, and serve as its Chairman of Technical Regulations Committee.

The Department of Transportation's hazardous material functions are a key element in assuring and improving the safety of our national transportation system. This is why the league supports H.R. 2178, and urges the Research and Special Programs Administration be authorized to meet all of its legal responsibilities for HAZMAT transportation safety.

With respect to HMTUSA, our experience with the act has been generally very positive. It appears that the act is creating the balanced environment we envisioned. We are especially pleased that the National Academy of Sciences' Transportation Research Board has agreed with the league position that a national computer system to track the movement of these commodities is not needed at this time.

The league supports the TRB's recommendations including the need to assure that any system is able to accommodate a variety of current and emerging technologies as well as the funding of a test program or programs.

On the whole, HMTUSA is too new to warrant making substantial revisions to them at this time. However, we do seek the inclusion of certain minor reforms to the hazardous materials requirements so that our goals of creating the safest and most efficient system are better achieved.

These minor mid-course corrections were not anticipated when the measure was enacted almost three years ago, and addressing them now would help to ensure the continued smooth functioning of this important law. They are attached our written testimony, which has been submitted, as appendix A.

The first proposed change affects the registration program and involves a requirement that takes effect July 1, 1994. The goal of this change is to ensure that U.S. exporters, especially chemical exporters, where the U.S. has a favorable balance of trade, are not unduly prejudiced or penalized. It is meant to prevent foreign retal-

iation against these companies, retaliation which could make U.S. products noncompetitive in global markets.

The second proposed amendment affects the allocation of registration funds. The league recommends that DOT be required to report to conditioning either annually or by annually on the disbursements of the registration program's revenues.

The third reform involves the base State registration program approved last month by the HMTUSA Section 22 task force. We urge that Congress promote the implementation of these recommendations by setting a deadline by which States must adopt them, including the development of a base State registration program. This compliance date should be after the testing of the pilot program recommended by Section 22 task force.

In addition, the State would be given transition assistance, including funding, to help facilitate voluntary compliance with the program.

The last recommendation seeks a study by the Department of Transportation on the proliferation in the number of commodities designated as hazardous materials for transportation purposes and recommendations to limit this growth.

We are deeply concerned that the HAZMAT transport list, which already numbers between 33,000 and 36,000 commodities, could be increased significantly by recent administrative actions aimed at protecting the nation's waterways. The recent RSPA edible oils proposal is an example of this expansion. We are glad that in the edible oils case, this subcommittee and the full committee share our concerns about this trend.

In conclusion, the National Industrial Transportation League supports H.R. 2178. It is a good bill, which will give the Research and Special Programs Administration the tools it needs to carry out its mandate over the next four years.

We also ask that it be amended to include the four points we have outlined so that HMTUSA continues to provide the balanced environment needed to assure that hazardous materials are transported in the safest and most efficient manner possible.

On behalf of the league, I appreciate this opportunity to present the views of the shipper community, and look forward to working with you and your staff on this important issue. We will both be happy to answer any questions at this time.

Mr. RAHALL. Thank you for your testimony.

Mr. Messemer, you indicated that pilot programs could prove useful. Do you have any recommendations on how these programs should be implemented, and how funded?

Mr. MESSEMER. The National Academy of Science study said technology can be a complementary role but not the key role. We heard this morning, in fact, from the DOT, about some programs they have in progress. The FRA program is one in Houston. And I think we probably should try to see how these programs move, to see what information we can gather from them before we move ahead because we are not sure what kind of information can be developed out of these programs.

So probably what is being worked on now, we should look at to find out what we can gain from that, and to use that as a basis to make a decision to move forward.

Mr. RAHALL. With respect to the registration of foreign shippers, which you discuss on pages 3 and 4, can you tell us if any countries impose similar fees on U.S. companies?

Mr. MESSEMER. I don't know of any that are proposed right now, but our concern is that could be a possibility, and it also could create a situation where it would impede trade to some extent in terms of the technicality of registering all around the world. We felt DOT probably had some discretion in interpreting this situation.

Mr. RAHALL. Mr. Temper, you discussed this issue as well. You propose that the hazardous materials registration program be limited to registration of those non-U.S. shippers and carriers who perform hazardous materials operation within the U.S. This amendment is intended to prevent foreign retaliation against U.S. exporters, retaliation which could, of course, make our products noncompetitive in the global marketplace.

Are you aware of actual retaliation or threats from foreign governments?

Mr. TEMPER. No actual retaliation, but there are letters in existence in protest of this, as Mr. Roberts said, that we are aware of, and I have seen letters from the United Kingdom, Germany and Canada that have said this is not the place to start, we don't want to kick off the football game here.

Mr. RAHALL. Is this a significant threat to U.S. chemical products in the global markets?

Mr. TEMPER. We believe it would be, yes, sir.

Mr. RAHALL. Mr. Collins?

Mr. Baker, do you have any questions?

Mr. BAKER. No, Mr. Chairman.

Mr. RAHALL. Gentlemen, thank you for your testimony.

Mr. MESSEMER. Thank you.

Mr. RAHALL. Our next panel is Mr. Fred Nesbitt, Director of Governmental Affairs, International Association of Fire Fighters, and Mr. John F. Mulholland, President, Source Data Network, Rockville, Maryland.

Gentlemen, we welcome you to the subcommittee. We have copies of your prepared testimony which will be made a part of the record at this point. You may proceed.

TESTIMONY OF FREDERICK H. NESBITT, DIRECTOR OF GOVERNMENTAL AFFAIRS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS; AND JOHN F. MULHOLLAND, PRESIDENT, SOURCE DATA NETWORK

Mr. NESBITT. Good afternoon, Mr. Chairman.

My name is Fred Nesbitt and I am the Director of Governmental Affairs for the International Association of Fire Fighters. I am here to represent the views of some 200,000 professional fire fighters of the United States, and also the views expressed today by our statement are supported by the Fraternal Order of Police that we worked very closely with on this issue.

As you know, fire fighters are the first responders to virtually all hazardous materials incidents and we experience firsthand the problems associated with inadequate information at the scene of HAZMAT incidents, and our members' lives are literally dependent

on the effectiveness of accurate, timely information. If the wrong fire suppression technique is utilized because of inadequate information, we don't measure our mistakes in terms of lost goods or vehicles or money. We measure it in terms of lost lives and impaired health.

Three years ago the IAFF and the Fraternal Order of Police and the Teamsters were the primary organizations advocating replacing the antiquated placard and manifest system identifying hazardous cargo with an automated information system, and we were able to generate over 200 cosponsors in the House of Representatives who supported this position. And in the end, we agreed to a study by the National Academy of Sciences and the study was conducted and it was completed in April of 1993.

There are two primary findings of the study we fully endorse that support our long-standing position on the issue of identifying hazardous cargo. And we want to make sure, Mr. Chairman, that our testimony is understood that we want to move forward on this issue. We want to build on the recommendations of the National Academy of Sciences and we don't want to reargue the issues of past years.

The first recommendation of the Academy substantially supports our contention that the current placard and manifest system is ineffective. The NAS research found that in 25 percent of the consequential highway incidents and 10 percent of consequential rail incidents, emergency responders were unable to obtain necessary information in a timely fashion. This led the NAS to conclude that quote, "The existing system fails with some regularity."

Unfortunately, there is not good data collection in this area, and we can tell you from firsthand experience that these are rough estimates and conservative ones. And by their very definition of "consequential," it does not take into consideration highway problems or rail problems that we have had where we have had a lack of information but because of the resourcefulness of the fire fighters or sometimes maybe a little bit of luck, nothing serious happened and we didn't have to evacuate and there were no injuries. But certainly the response was delayed and it put our people in a risk situation for some amount of time until they were able to identify what product they were dealing with. Without the operational confidence of emergency responders, no identification system can function effectively.

In addition to severely criticizing the placard and manifest system, the NAS report does offer some recommendations for improving it. We think it would be a mistake to assume that because some improvements are possible that the system can be repaired. We would say that in the next few years if there are some modifications that would improve the system during the transition period to another type of identification system, then by all means let us do them, but do not let such Band-Aids detract us from the central truth that the current placard and manifest system is unworkable.

The second major conclusion of the NAS study is that there are technologically advanced identification systems that would dramatically improve the ability of fire fighters to identify hazardous cargo. Such automated identification systems, as are already in

common use by carriers of hazardous materials, would be well suited for the information needs of the emergency responders. Indeed, one of the cruel ironies of the issue is that the vital information so elusive to emergency responders is readily available to the HAZMAT carriers and shippers, and in many cases is a routine part of doing business.

The enormous potential benefits of establishing a nationwide automated system led the NAS to recommend that the Federal Government immediately establish one or more start-up projects as the first step towards implementing a nationwide system. We fully concur that any automated identification system that replaces the current one should be thoroughly tested and phased in.

We believe it is imperative that the start-up be tested under a variety of conditions. The NAS discusses the option beginning with one or more start-up projects on railroads because of the relative ease of undertaking such a test. But the issues surrounding identification of hazardous cargo differ significantly, obviously, from mode to mode.

Therefore, Mr. Chairman, we recommend that any start-up system include a test of automated system effectiveness in responding to hazardous material incidents on the nation's highways. We think there should be a rail test and a highway test so we can look at the various modes of transportation and gather the data over the two-year period.

We also recommend the involvement of rank-and-file fire fighters in the development and testing of such a system because we think it is imperative to keep in mind who it is that must utilize the system and not to allow operational decisions be made solely by computer technicians and transportation engineers. We stand ready to assist DOT to facilitate in the improvement of such a system.

Finally, the NAS recommends a two-year start-up project to develop an automated system. We believe two years is adequate time to select and get the bugs out of a start-up identification system, and we also urge that the Congress grant the Department of Transportation full authority to promptly mandate a nationwide automated identification system covering all modes and carriers at the conclusion of the two-year period.

Technology is developing and improving daily, and it is hard to believe anyone would cling to paper placards and manifests in the day of satellite communications and advanced computer technology.

Let me turn my attention to another area that was addressed briefly by the Academy but is equally important to us, and that is certainly the area of training and equipment for fire fighters.

Let me say, Mr. Chairman, that the current HAZMAT training for a fire fighter is wholly inadequate. We have hundreds, if not thousands of fire departments across the United States, both professional and volunteer, that are not trained and not equipped to respond to any kind of HAZMAT incident. And one I know that you would be familiar is in Nitro, West Virginia, where we have a valley with chemical plants; we have transportation of chemicals moving through that valley, and we have a fire department of 21 people, Mr. Chairman, who don't have the equipment and don't have the training to respond to any kind of an emergency in that situation. And that is something that really needs to be corrected.

The HMTUSA bill authorizes a program of emergency responder training. Unfortunately, the program seemingly has been utilized for every purpose other than the one for which it was intended: Training fire fighters to respond to hazardous materials incidents.

The National Academy recommended a couple of suggestions in this area. One, they recommended another government study into the problems of training and the development of a HAZMAT training curriculum. Let me tell you neither one is needed. There have already been extensive studies of HAZMAT training programs which are already available.

IAFF, in conjunction with and under a grant from NIOSH, developed a HAZMAT training program which has already been formally recognized by the U.S. Fire Administration and is currently in use by Federal Government agencies, all 50 States, and several foreign countries.

There is simply no need for further studies or curriculum development. We need money now to begin training the people with the curriculum that has been developed. So rather than devote time and energy and money for further government studies and curriculum development which we could do forever, we recommend that the resources go toward actual training of fire fighters and other emergency responders.

Specifically, Mr. Chairman, we urge that direct grants be available under HMTUSA to nonprofit organizations for the exclusive purpose of conducting hazardous materials response training to fire fighters and other emergency responders.

Mr. Chairman, HMTUSA made great strides toward creating a unified national system of regulating the transportation of hazardous materials. And today you have an opportunity to complete the work begun in 1990 by ensuring that emergency responders have the information and the training and the equipment necessary to fully respond to all hazardous materials incidents.

We realize that hazardous materials will travel across the country by rail, by truck, by boat and by plane, and we think that it can be done safely if the emergency responders are trained equipped, and most importantly, have accurate timely information when an accident occurs so that they can respond.

We look forward to working with you in the coming months to achieve this goal. We thank you for this opportunity to present our views and would be happy to answer any questions you may have.

Mr. RAHALL. Mr. Mulholland.

Mr. MULHOLLAND. Good afternoon. My name is John Mulholland. I am President of Source Data Network, the company which developed the Computerized Telecommunication Central Reporting and Data System, known as the system.

Mr. Chairman, I very much appreciate this opportunity to appear before you and Members of this committee. In doing so, I express my support of the reauthorization of the Hazardous Materials Transportation Act, and urge that specific language be included to mandate the implementation of the system.

Others may testify to the fact that no such system presently exists in a satisfactory or operational form, and may quote from the recently released Special Report 239 of the National Academy of Sciences' Transportation Research Board to support this position.

Mr. Chairman, I am here to tell you that this is definitely not the case.

In my extended testimony and accompanying material, I clarify and rectify the many false assumptions, conclusions and in lieu of a better word, the erroneous interpretations presented by the TRB in that report.

Source Data Network, utilizing the finest brains in the computer telecommunication industry, including Dr. Paul Fingerman of the Boeing Company, whose main forte is putting men and equipment on the moon, and Dr. Milt Zohn of the Martin Marietta Company became the creator of the system back in 1983. This system was the primary subject of S.R. 239.

Yet, for reasons unknown to us, SDN was not asked to appear before the TRB. Only when communication was initiated by us with the staff of TRB was an invitation to appear extended. Why no mention of my testimony or the SDN system was made in the report is a matter of no small conjecture on our part.

Public law 93–633, Section 102 states that the purpose of the Transportation Act of 1974 is to protect the nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

Section 109(d)(2) stresses that the Secretary shall establish and maintain a central reporting system and data center, and I reaffirm this term, "A," so as to be able to provide the law enforcement fire fighting personnel of communities and other interested persons and government officers with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials.

In essence S.R. 239 does not dispute the need for modern technology, but Section 4 of the report explores the possibility of the chemical industry and its surrogates developing a system, which like the present ineffective one would be completely under the control and not of its own money but hundreds of millions of tax dollars in R&D. In so doing, the report all but ignores the availability of the state-of-the-art system which already exists.

Specifically S.R. 239 suggests that $300 million should be made available to fund a two-year study to develop a system which would do what the Source Data Network System was ready to do 10 years ago. When life and property are still unprotected and the lives of fire fighters and other emergency response personnel are in constant jeopardy, as those brave men in Kansas city who lost their lives in 1988 because of 10 years of inaction, further delay in adopting an effective reporting system is simply not acceptable.

The Source Data Network System was developed in the private sector with private funds, therefore making unnecessary the need for Federal dollars as suggested in S.R. 239 to reinvent which has already been accomplished and proven.

The SDN system will function with industry user fees on a per manifest basis and therefore does not require Federal funds to operate. Adoption of this system will result in the savings of $12.2 billion annually to the industry.

Additionally, it is set up to provide a trust fund through which millions of dollars will flow to 39,000 communities to train, equip, and purchase the appropriate telecommunication equipment and to

provide funding to governors of States in order to comply with the requirements of SARA Title III, which is currently unfunded.

With the implementation of the system, the National Response Center becomes a viable organization as was intended by under CERCLA by being able to interface with FEMA, the Army Corps of Engineers, and other Federal authorities with State, county, and local response facilities as well as military commands in the case of catastrophic natural disasters such as Hurricane Andrew. SDN is truly the missing link which can bring the Federal disaster response mechanism into its maximum potential in full compliance with all Federal law, including HMTS, CERCLA and SARA Title III.

My written testimony contains a more detailed look at the SDN system, its history, and a detailed critique of S.R. 239.

In conclusion, I respectfully request that this committee consider mandating the use of proven, present technology which meets the letter as well as the spirit of public law and congressional intent expressed over the past 19 years. This country and emergency response workers have waited too long.

At this time, I would answer any questions that you may present. Thank you.

Mr. RAHALL. Thank you, gentlemen.

Fred, let me begin by asking you several questions. In your testimony, you stress that a major failing of the current system, the placard manifest system, is the limited confidence that emergency responders have in their accuracy.

Why do you have greater confidence in the information that shippers would provide to an automated system than the information they currently supply via the placard manifest and emergency response system?

Mr. NESBITT. NAS have recommended a system that the information going in would be accurate and tested. We think it would be more accurate only because in our current experience, we come on an HAZMAT incident, for example, a truck, either the placards are missing, nothing there to identify it, or the truck has rolled down over a hillside, it is burning, you can't get the information. We are expected to go into an incident, perhaps into the cab of a truck that is burning or has something that is leaking, to try to get information, and our experience is the information is not there or it is inaccurate and we don't trust the information.

Now, we would not immediately have more trust in a computer system if you said, Well, we are going to have a computer system this morning and it is going to start working at 2 o'clock today, and will you trust it at 2 o'clock? The answer is no, we won't trust it at 2 o'clock. But based on experience and working out the bugs and use of the system, we would learn to trust the system. We think there would be more trust, a better kind of system in terms of the identification and readily available information to us that our people could obtain from a distance.

I mean I think that is one of the key factors. You know, with the placard now as you are driving down the highway, I am sure you've seen a placard on the vehicles. One of the placards says "hazardous." That doesn't tell us what is in there, other than, "If it tips over, be real careful." Certainly if it is nighttime and raining, the

truck drives down over a hillside and it may be smoldering and we can't see a placard; they expect a fire fighter to go down over that hillside, crawl in the cab and hopefully find a manifest in the glove box to tell us what is in there. Lots of times we don't find the manifest or it isn't the accurate one. We think there has to be a better way of doing it.

Mr. RAHALL. Why do you believe then that shippers' and carriers' compliance with hazardous communication requirements would be better with an automated identification system than the current system?

Mr. NESBITT. We think there could be better means of enforcement, I think is one possibility from the law enforcement point of view that they could do more checking. You wouldn't have the capability of someone removing a placard. I think you would have less opportunity for mistakes in that particular sense and you would certainly have more enforcement with it.

Today enforcement is very difficult. If you talk to the State police or the people who have to enforce this, particularly if it is a mixed load, they look at the placard, they open the back of a truck and they look in, but they are not sure what is in that particular vehicle. No, enforcement is a very difficult situation.

Mr. RAHALL. Let me ask you one final question. How would you suggest that pilot program be implemented in the trucking industry, and do you have any estimate as to how much such a program would cost and how we could fund that program?

Mr. NESBITT. I can answer two of the three. Well, first of all, we think it is essential to have one in the trucking industry because the frequency of accidents is more and we have more problems in trucking because while in rail certainly you have more bulk shipments, in trucking you have more mixed load which gives us certainly a greater problem.

There are a number of trucking companies that are highly computerized right now and they do it certainly for tracking of their goods for inventory control, tracking where their vehicles are. And it is not unusual for a trucking company to say to us, Well, gee, we know what is in the truck and we know where it is. My problem is, representing emergency responders, we don't know what is in that truck when it is tipped over or involved in a wreck.

We certainly want to do a pilot project with a trucking company that has already a computer system in place and it is already currently monitoring this, entering the data, tracking it so we can then see how we could fit into that system and get the information and utilize it.

Paying for the start-up project would either be congressional appropriation, hopefully we go down the road and develop a nationwide system whatever costs would be affiliated with a nationwide system. I think the most logical way would be doing a user fee on the shippers to pay for such a system.

I don't know what kind of system we are talking about, but certainly I think the point is in rail and trucking now the responsible ones are already doing this. The problem we have in their system, we don't know what it is.

We heard one of the people from the railroad company who is a safety person say when there is a train wreck involving hazardous

materials, he gets a call at home, he gets a computer printout at home. He grabs his gear and goes. When he goes out the front door, he pulls out a computer sheet that tells him exactly what is in that train and the lineup of that train and he gets everything he needs to deal with when he goes to that site.

All I am saying is, as fire fighters we would like to have that information. And the trucking companies who know what is in a particular truck, where it is, where it is located, their tracking for inventory and business purposes, we would like to know that when there is an accident involving a vehicle.

Mr. RAHALL. Thank you, Fred.

Mr. Mulholland, one criticism of the current hazardous material identification system is some shippers or carriers fail to provide proper placards or hazardous communication information. Because of this failure to provide accurate hazardous communication information, emergency responders do not have confidence in the placards and shipping papers. How does your system address these concerns?

Mr. MULHOLLAND. As demonstrated for the National Academy, I showed them a 25-minute VHS presentation of our system in operation, and how the information put into the system has a series of cross checks for identification and verification of every piece of data that is entered on the Universal Manifest Form. Any false or erroneous data will not be accepted by the system until corrected or cancelled. The UN/NA system of identification is utilized to eliminate any possibility of spelling or product identification errors (Now required by federal law RCRA). In conjunction with this cross check procedure, the computer generates, at random, a unique manifest number known only to that one particular manifest. When certified correct, the manifest is entered in the current data files of the mainframe computer to remain until closed out upon reaching its final destination. This informawtion is immediately available to emergency responders in the field on a need know basis, at any location in the country. When the emergency responder accesses the mainframe computer, he notes the unique number certifying a correct manifest, the hazardous materials involved and activities the data base that tells him how and what to do about the HM at the incident site. The scene commander can request the demographics of the area for full data as to who and how to evacuate. When the generator enters a product that is spelled in-correctly, the system will not accept it until corrected. If it is on a carrier that does not have a proper DOT ID number, it will not accept it, nor when the generator or receiver enter false identification numbers will they be accepted. Only certified correct manifests will be accepted by the system.

In answer to your question concerning the placards, the biggest fallacy is the lack of a system that verifies and certifies that the placard is correct on initial placement and remains that way until reaching its destination. Anyone can hang, or change a placard at any time depending on the circumstances. Case in point, truckers have changed placards rather than wait or use the detour, in order to use the tunnel going into Pittsburgh, Pa. The solution to waiting is "flip the Placard" and drive on. This is the plague for fire fighters.

Mr. RAHALL. Earlier you heard Congressman Applegate raised the need to establish guidelines for information and tracking systems so that companies can develop their individual systems while also interfacing with the large network of systems. From your viewpoint as a system designer, would you share with us your thoughts on such guidelines?

Mr. MULHOLLAND. Surely. The HMTA of 1974, clearly states "A central reporting and dawta center . . .", meaning singular, so that those who need know definitive information have one place to search for the information required. Not multiple systems. Tracking of general carriers are of little value to emergency responders and used for internal management information only. The immediate questions of first responders are: what is the cargo; how do we handle the hazarous materials; who, how and where do we evacuate should the incident require evacuation and, most important of all, how do we communicate this definitive information to any given location? Source Data Network is the only system capable of answering thse questions today, and through the use of CELLPLEXUS, can access any data base anywhere in the world from the accident site. A single rail car number in a train makeup allows the SDN system to give the first responder all the hazardous materials and their location on the total train with all necessary back up information. Tracking means little or nothing when the train blows up, for we can tell where the accident is by the flames and smoke and the carnage that follows. The question is what was the material that caused the incident, how do we handle it, and do we need to evacuate? Tracking in this capacity is a joke.

Roughly two months ago, a tractor trailer, in a secured convoy and being tracked by the GPS system, jack knifed in New Mexico and it took three and one half hours to determine its cargo which was said to be detonators for nuclear weapons. Had the SDN system been operational, all data would have been known within seconds of the incident, the area secured and cordoned off in a radius of two to three miles. Yes, our system can provide tracking of the most sophisticated nature.

Telecommunications is vital for the transmission and recovery of intelligent information in the most remote of areas regardless of weathr conditions. Without this capability, as is contained in CELLPLEXUS, emergency response comes to a halt.

Mr. RAHALL. Do you know if there are other existing technologies, other than yours, of course, that are capable of providing the type of information collection system that you believe is essential?

Mr. MULHOLLAND. I can best answer that question in this manner. Recently the Army Material Command put out an RFI seeking suppliers of general purpose automated hazardous waste/hazardous materials tracking and reporting systems etc. I was informed we were the only respondent; however there were many seeking TAX DOLLARS for R&D in the hopes of developing such systems as is the case before you. Based on Special Report 239, neither the National Academy, CMA nor their surrogates have a clue as to how to accomplish the fact.

Mr. RAHALL. Thank you.

Does the gentleman from South Carolina, Mr. Clyburn, have any questions?

Mr. CLYBURN. No.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins?

Mr. COLLINS. I don't have any right now.

Mr. RAHALL. Mr. Baker, the gentleman from California?

Mr. BAKER. No.

Mr. RAHALL. No questions.

Thank you, gentlemen.

Mr. RAHALL. Our next panel, Timothy P. Lynch, Vice President, Legislative Affairs, American Trucking Association, and Clifford J. Harvison, President, National Tank Truck Carriers, Incorporated.

Before the panel begins, Tim, I notice that you have been back there leaning on that fiber drum all morning.

TESTIMONY OF TIMOTHY P. LYNCH, VICE PRESIDENT, LEGISLATIVE AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS; AND CLIFFORD J. HARVISON, PRESIDENT, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. LYNCH. You just stole my first joke line. I was going to offer that I had been leaning on that most of the morning. It seemed pretty sturdy to me.

I would also note, Mr. Chairman, I have probably been in this committee room about a hundred times and I think this is the first time I have had a seat in the room.

I am Tim Lynch, Vice President of Legislative Affairs with ATA. I welcome the opportunity to present the Association's testimony concerning the trucking industry's perspective on the reauthorization of the Hazardous Materials Transportation Act.

ATA, the nation's trade association of the trucking industry, represents every type and class of motor carrier in our nation, for hire and private, regulated and exempt, through its 51 affiliated State trucking associations, organizations, conferences, and several thousand individual motor carriers.

The trucking industry is composed of more than 260,000 firms and accounts for 77 percent of all freight transportation revenues in this country. The public and the American economy depend on truck transportation to provide the goods, services and materials that move America.

Let me first start by commending the leadership of the House Public Works Committee for its continuing commitment to promoting the safe and efficient movement of hazardous materials. While certainly not as trendy as some of the other issues on the congressional agenda, it is nonetheless an important issue for carriers, shippers, the public, and those emergency responders serving the public.

Hazardous material is a term of art and includes a broad spectrum of products from terms the public would think of hazardous, such as gasoline to consumer products, such as lighter fluid and charcoal. The safe transportation of hazardous materials is vital to the public safety and economy of the country.

We fully support the legislation that reauthorizes the Hazardous Materials Transportation Act and the commitment it represents for

a continuing strong Federal role in governing the regulatory aspects of the transportation of hazardous materials.

I would like to take this opportunity to point out a number of areas of special concern to the motor carrier industry regarding the safe and efficient movement of hazardous materials the subcommittee should consider as it reauthorizes the program.

First, registration and fees. The 1990 amendment to the Hazardous Materials Transportation Act required that motor carriers and shippers engaged in the transportation of hazardous materials register with the Department of Transportation. The registration and fee program is now in place with registrants paying an annual fee of $300. The monies generated by this regulation program are used to fund a public sector grant program created to increase the effectiveness of State and local hazardous materials emergency and planning programs.

Title 49 of the act prohibits imposition by the States of hazardous transportation fees which are not equitable or which are not used for purposes related to the transportation of hazardous materials. Unfortunately, this has not deterred the States from imposing State fees on motor carriers transporting hazardous materials, and some of these fees are becoming a real concern to the carriers. The proliferation of State and local hazardous materials fees is a growing and serious problem for the trucking industry.

Consequently, we would urge the subcommittee to carefully review the growth of duplicative hazardous materials fee by the States and localities. We would further suggest that the subcommittee give consideration to precluding States from assessing fees as a condition for accepting Federal funds.

Number two, tracking of hazardous material movements. The motor carrier industry was pleased to see that the National Academy of Sciences' study recommended against the establishment of a national database for the tracking of hazardous materials.

We agree with the National Academy of Sciences' conclusion that a national central reporting system as originally proposed, quote, would be unlikely to function as intended or to produce benefits sufficient to justify its costs.

Issue number three, separation and segregation of hazardous materials in transit. The Research and Special Programs Administration has issued new regulations for the segregation for land transportation of hazardous materials which are scheduled for implementation on October 1, 1993. The proposed new rules will increase incompatible combinations without any safety justification from DOT and create unnecessary delays in transportation with associated costs of $118 million per year.

For example, 13 new restrictions will no longer allow hazardous materials to move in less-than-truckload movements with other hazardous materials. A newly imposed restriction is that of corrosive liquids and flammable gas. These products have been transported frequently in the same vehicle without restriction in a safe and incident-free manner.

These rules were published in December of 1991 and we have been unable to get the Department of Transportation to act on our concerns. We urge the subcommittee to encourage DOT to act on

our four-month-old petition to modify the separation and segregation rules.

Finally, Mr. Chairman, since the early 1980s, State and local governments have been increasingly concerned about the transportation of hazardous materials. However well intentioned, much of this has been based more on perception than fact or simply a lack of familiarity on the part of the States or localities with the Federal program.

Regardless of the particular form a State or local law might take or the good intentions of a State or locality to increase the safety of its citizens to the extent that such unique State and local laws may diminish the risk in one area, it has often occurred at the expense of the citizens in other States and localities.

For example, under Federal law as it existed prior to the 1990 amendments, one jurisdiction at one time required trucks to be painted special colors based on the hazardous materials being transported. This marking system was not nationally uniform and interfered with interstate commerce. We would therefore recommend that as you consider the reauthorization process, you not reduce the uniformity provisions now contained in current law.

In closing, I wish to assure you of ATA's continued commitment to the safe transportation of hazardous materials on our nation's highways. We offer our support to the passage of the reauthorization of the Hazardous Material Transportation Act, and I would be pleased to answer any questions you may have.

Mr. RAHALL. Thank you.

Mr. Harvison.

Mr. HARVISON. Thank you, Mr. Chairman. And good afternoon and thank you for the opportunity to testify in support of the reauthorization of the Hazardous Materials Transportation Uniform Safety Act, or better known as HMTUSA.

My name is Cliff Harvison. I am President of National Tank Truck Carriers, Incorporated, a trade association the members of which are extensively involved in the transportation of hazardous materials, hazardous substances and hazardous wastes throughout the Continental United States.

Just about three years ago, the Congress led by this committee concluded an extensive reevaluation and restructuring of the nation's laws and regulations dealing with HAZMAT transportation by passing HMTUSA. That important legislation focused on three critical elements of considerable importance to the tank truck carrier and my membership.

Number one is it redefined and clarified the regulatory roles of the Federal Government versus those of States and local jurisdictions.

Number two, it provided resources and programs to train emergency response personnel who are at risk at the scene of an accident or incident.

And number three, it directed the Secretary of Transportation to implement a registration and/or permitting program which will eventually enhance both compliance and enforcement.

Simply stated, Mr. Chairman, the members of NTTC supported those objectives in 1990 and we see no reason for the Congress to alter the present course.

Importantly one must note that Congress did not pass HMTUSA in a vacuum. For instance, the uniformity and safety mandates of HMTUSA blend well with prior congressional actions dealing with such entities as the commercial driver licenses and mandatory drug and alcohol testing which impact all operators of trucks regardless of the nature of the cargo.

Perhaps the only glitch we see on the horizon, and as a matter we trust will be reviewed by this committee, concerns fees for State HAZMAT carrier registration programs.

Presently, HMTUSA has created a Federal ongoing registration program for shippers and carriers of hazardous materials. The annual registration fee is currently set at $300. At the same time, HMTUSA permits individual States to levy fees on those same carriers and shippers. Basically the proceeds from both fees were to be directed to the enhancement of training and the enforcement at the State and local levels of government of hazardous materials regulations.

We have no problem with the concepts involved. However, we do believe that some States might be tempted to impose fee levels so high as to defeat the basic purposes of HMTUSA and/or simply become another revenue raiser. The current statutory language properly places no dollar cap on the level of State fees. By the same token, the only test that a State must meet is a showing that the fee is equitable and that it is related to the transportation of hazardous materials. So therefore I believe the potential for abuse is obvious.

Mr. Chairman, we respectfully ask that this committee and the Congress amend HMTUSA to require those States which choose to levy HAZMAT registration fees to at the very least publicly disclose the financial basis of any registration fee. This should enable interested parties to assure that State HAZMAT fees are set according to congressional guidelines without imposing burdens on State officials and administrators.

Again, Mr. Chairman, I thank the committee for the opportunity to testify this afternoon in support of reauthorization with minor clarifying amendments, and like Mr. Lynch, I will attempt to respond to any questions.

Mr. RAHALL. Thank you, gentlemen.

Both of you express grave concerns about the proliferation of State registration fees. Since 1990, has there been a change in the number of States levying fees and the amount of those fees?

Mr. LYNCH. Mr. Chairman, I am not sure to what extent the number has changed. I believe that approximately 27 jurisdictions now assess those types of fees. I think our concern is that over time those fees get worked into the general revenue base and that as they proliferate, it will be just that much more difficult to try and control those costs.

Mr. HARVISON. I would agree, Mr. Chairman. We find that the fees are becoming a little bit more diverse in their application.

For instance, there are a number of States which for years did have hazardous materials registration fees. We are finding a proliferation of such fee concepts at levels of government below the States such as certain cities and other types of municipalities.

There has been a diversity of creation and application of fees within the family of HAZMAT, and I realize that is probably an oxymoron. But, for instance, there are many communities which would impose fees just for the transportation of hazardous waste versus fees for the overall transportation of hazardous materials, and many people consider that hazardous waste transportation although it is dramatically different or oftentimes dramatically different, really a subset.

So again, Tim is correct. We are finding a proliferation of fees on the one hand and we are finding them more pinpointed on the other.

Mr. RAHALL. Can you give us examples of representative fees that are assessed by the States, what those amounts are, or if you don't have them, provide them for the record?

Mr. HARVISON. We would be happy to provide them for the record.

[The information received from Mr. Harvison follows:]

NATIONAL TANK TRUCK CARRIERS, INC.
THE NATIONAL ORGANIZATION SERVING THE FOR HIRE TANK TRUCK INDUSTRY

CLIFFORD J HARVISON
PRESIDENT

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June 18, 1993

Mr. Jack Fryer
Subcommittee on Surface Transportation
Committee on Public Works & Transportation
United States House of Representatives
Room B-376 RHOB
Washington, DC 20515

Dear Mr. Fryer:

During the recently completed hearings on reauthorization of the Hazardous Materials Transportation Uniform Safety Act, I was asked by Chairman Rahall to provide, for the record, "examples of representative fees" assessed against motor carriers for the transportation of hazardous materials (by state and local governments).

It is my understanding that such a basic listing (which I would have provided) has already been given to the Committee staff by Ms. Cynthia Hilton of the Chemical Waste Transportation Institute.

In addition to that list, please note that I have been advised, most recently, that so-called "hazmat fee requirements" have been imposed by the State of Colorado ($50/carrier for the transportation of hazardous wastes); the City of Cleveland, Ohio ($50/carrier/year for all hazardous materials in placarded quantities); and, the City of Laredo, Texas ($500/terminal/year for all hazardous materials).

Mr. Fryer, I hope this material is responsive to the Chairman's request.

Very truly yours,

Clifford J. Harvison
President

Mr. RAHALL. Witnesses today will suggest that more than one pilot project should be instituted for establishing a database for tracking shipments of hazardous materials. Have any motor carriers stepped forward to volunteer for such a project?

Mr. LYNCH. I don't think, Mr. Chairman, any motor carriers have stepped forward, but I don't think the details of the pilot program have been sufficiently worked out to the extent that a motor carrier or motor carriers have been asked to participate in that.

I think one of the things to keep in mind is that there are numerous carriers in the field that have fairly sophisticated tracking systems. I don't think you have to go much further than looking at their own marketing materials to indicate that that is a major issue for carriers in marketing themselves to the public and to shippers.

The question I think becomes, to what extent do those programs that can track hazardous materials as well as all other commodities, would they fit in with the type of system that has been proposed in the past?

I can envision a whole gamut of different types of pilot projects. You can look at a single lane of traffic. You can look at an individual carrier. You can look at types of commodities. And until those things have really been put out on the table, I think we would be hard pressed to go to any of our carrier members and say, Would you be willing to participate in this.

I think the short answer is, they would be willing to cooperate as much as possible, but to say actually, Yes, we would do that, they would have to see what is entailed in that kind of system.

Mr. HARVISON. Mr. Chairman, the devil is sometimes in the details, to elaborate on this situation. Before we get into pilot programs, I have been rather distressed this morning to review some of the testimony and hear some of the testimony.

There has been one major area that has been completely avoided in terms of the context of the computerized central system or call it what you will. Everybody seems to be focusing on the carrier in terms of whether how many trucking companies you want in or how many railroads.

Mr. Nesbitt, who just left the podium, noted that really what the fire fighter wants to know is what bad can happen. So if I am a tank truck carrier, as an example, and I am transporting chemical dimethyl-whatever and I have an accident and a fire fighter pulls up to the scene and I tell them that dimethyl-X is in the truck, that really doesn't help him. What the fire fighter wants to know is, Can I put water on it or not? That is usually his most available weapon. Do I have to wear protective clothing? Do I have to wear a Scott air pack? Am I going to get cancer if I touch it or ingest, or what have you?

The railroads and trucking companies just don't have this kind of information. So, with all due respect, in discussing—and I was very, very disappointed in the TRB report that it did not elaborate on this subject. Before we discuss pilot projects, we have to really define what information is to be at the scene. And secondly, we have to go to the source of that information, and the source of that information nobody talks about, and that is the manufacturer of the product.

The chemical manufacturer or the shipper, often erroneously referred to as the generator, is the entity that knows what hazards that commodity presents to an emergency responder and nobody throughout this entire discourse has talked about the role of the manufacturer. That manufacturer alone can provide that information.

And so we start talking about, well, we are going to put two major truck lines over one railroad or seven railroads, it is immaterial. It is how many shippers are going to be able to or willing to provide the information that the first responder must have.

So this is a very, very detailed and very, very complex pilot program and one of the critical areas of information, and I think to me and I think to the emergency responders, the most critical element of information hasn't even been discussed yet.

Mr. RAHALL. I was going to ask you all if you might recruit some volunteers for us, but I see that might be pretty difficult.

Do you have any idea of what the costs of these pilot programs may be?

Mr. LYNCH. Again, I think part of that answer would have to be what it is that either this committee or DOT may want to look at. For a carrier that currently has a fairly sophisticated tracking system, I suspect the cost would be somewhat held down because they had such a system but that may not be really reflective necessarily of the industry at large.

If you went to a carrier that did not have that kind of a system, you would probably be looking at a lot of up front costs just to get their internal tracking systems up to a level that you would want to measure.

So the short answer is, I don't think we have had any estimate of that. Are you aware?

Mr. HARVISON. I am not aware. A lot of it is going to depend on the system, the reliability of the system. For instance. We have a number of carriers right now in HAZMAT that are dealing with satellite tracking and it is a great system. Again, it can tell you what product is there but the systems we have right now cannot tell you what—you know, whether you must put on a Scott air pack. Don't put it in water or what have you. That is the entire purpose of the DOT emergency response system and the emergency response guidebook, and for all its weaknesses, it is about the best game in town right now.

Other problems we have had, for instance, if you are in a situation where your truck is on satellite and your truck loses line of sight with the satellite, you have no communications whatsoever. So you can have a truck, for instance, that is sitting underneath an underpass at a stop light with absolutely nothing bad going on and as far as the satellite is concerned, the truck is lost.

We have had situations where vehicles with satellite communications have overturned and again the antenna lost line of sight with the satellite. As far as the system is concerned, the truck is lost.

There are just a myriad of problems that have to be analyzed or first approached, and secondly, analyzed and dealt with in a real-time basis before we can go along this track.

Mr. RAHALL. Well, based on the NAS recommendations, based on comments coming from the witness table today and from Members

of this committee, it seems that this is a direction in which we are headed toward a limited prototype project.

So I would ask if you gentlemen would continue to work with us and perhaps we can come up with a framework that we can design and state more specifically what we are after and help us develop such prototypes.

Mr. HARVISON. Absolutely, Mr. Chairman.

Mr. LYNCH. I think as Cliff has probably indicated, once we know what the goals are, what we are trying to achieve, I think a lot of the other things can sort of fall down from there.

Mr. RAHALL. All right. I have no further questions. Thank you. The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. I am fine, sir.

Mr. RAHALL. The gentleman from South Carolina, Mr. Clyburn.

Mr. CLYBURN. No, thank you.

Mr. RAHALL. The gentleman from California, Mr. Baker.

Mr. BAKER. Let me add one comment, Mr. Chairman.

I think you are on the right track. If technologically we are going to be moving toward satellite communication and so forth, it would be nice to have a study that the truckers willfully participated in. I think as the carrot we can offer to remove some of the onerous paperwork we have heaved on these people in exchange for becoming more modern so perhaps we—you folks in industry ought to look at the menu of regulations that we have imposed upon you and then trade that off versus subject of the study, and let's see if we can't modernize and become more competitive.

Everybody complains about all the Mexican shippers are going to take us over and we are not going to be able to compete. How about the Canadian shippers and the others as we continue to have one more regulation on the back, one more straw on the camel. So there is room here I think to improve the trucking industry with our joint cooperation.

Mr. LYNCH. I think we can provide a list of those regulations for the record.

Mr. RAHALL. Thank you, gentlemen.

[The information received from Mr. Lynch follows:]

Overregulation "Horror Stories"

ENVIRONMENTAL

1) Treating Antifreeze Like Arsenic: Impractical Spill Reporting Requirements

Regulation

Environmental Protection Agency (EPA) spill reporting requirements under the Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA or Superfund), require companies to report any spill of ethylene glycol (antifreeze) above 1 pound (1 pint), to federal, state and local agencies. A telephone report must be made immediately and a written report must be filed within 30 days. Antifreeze is a low-risk chemical found in every motor vehicle and every household.

Why is it a problem?

Such reporting requirements are unworkable. Every time a vehicle radiator overheats or a radiator hose breaks, or if a radiator is ruptured in an accident, a spill would have to be called in to 3 agencies and a follow-up report filed.

Solution

EPA should establish a higher (1000 pound) reporting threshold for low-risk, commonplace chemicals such as ethylene glycol. There is no need to treat antifreeze like arsenic.

2) Redundant Reporting Requirements for Underground Fuel Tanks

Regulation

All facilities which store fuel in underground storage tanks (USTs) are required to file an annual notice with the appropriate state and/or local planning districts in accordance with EPA's SARA Title III regulations (40 CFR Par 370). EPA and state regulatory agencies also require reporting and notification of underground storage tanks under 40 CFR Part 280.

Why is it a problem?

This double notification is a needless waste of resources and time, both for the government who administers these programs and for the regulated community required to comply with these requirements. This redundant reporting serves no real benefit to emergency responders or the community since fuel storage and dispensing is a commonly recognized activity. Information obtained from the registration process can easily fulfill the emergency planning needs of the community. EPA estimates there are approximately 1.8 million registered USTs, the majority of which would be subject to reporting requirements and registration

requirements.

Solution

EPA should allow the state UST registration process to satisfy the SARA Title III requirements. The requirement for reporting fuel storage under SARA Title III is duplicative and should be deleted.

3) Needless Spill Control Plans

Regulation

Trucking company facilities with certain fuel storage characteristics are required by EPA to prepare and update Spill Pollution Prevention Control and Countermeasure (SPCC) plans every three years. EPA's comprehensive underground storage tank (UST) regulations (40 CFR Part 280), which cover tank integrity, testing and spill prevention now cover an ever broader range of areas to prevent and control releases of petroleum products from fuel storage systems.

Why is it a problem?

The new state and federal UST regulations makes the SPCC planning requirements an expensive and outdated regulatory formality, since the UST regulations cover everything and more than the SPCC plans.

Solution

Facilities covered by the UST regulations should be exempt from SPCC planning requirements.

4) Air Conditioning Maintenance Certification Requirements

Regulation

EPA now requires anyone performing maintenance on motor vehicle air conditioners to be "trained and certified" and to use approved recycling equipment. Training and certification requirements favor commercial testing programs with unusual standards including open book testing and use of independent testing authority and the issuance of a special registration number.

Why is it a problem?

Mechanics do not need to be certified and registered to successfully perform maintenance on air conditioners in an environmentally acceptable manner. Mechanics who perform maintenance on other more complex vehicle components have done so successfully for years without mandatory training and certification requirements imposed by a federal agency.

Solution

EPA should reduce unnecessary compliance costs by eliminating the certification requirements, while maintaining voluntary

training requirements. EPA also should delete the provision on third-party testing and the requirement that unique certification numbers be issued.

HAZARDOUS MATERIALS

5) Clean-up Costs for Hazardous Materials Spills

Regulation

Motor Carriers are faced with paying tremendous costs for the clean-up of a spilled hazardous material by state and local environmental departments.

Why is it a problem?

Over the past several years motor carriers have been billed by state and local agencies for responding to hazardous materials spills. Often, because of mutual assistance agreements between jurisdictions, several emergency response agencies respond to even the smallest of spills. As a result, carriers may be billed by multiple agencies for cleaning of emergency response gear and a myriad of other expenses, from food to the purchase of T-shirts. Many times, even though the motor carrier has a contract with a hazardous waste clean-up company, the responding agencies will disallow their use and call a "certified" hazardous waste team of their choice. These companies often bill the motor carrier for hotel accommodations, meals and overtime compensation that mount up while waiting for the word from emergency responders that it is safe to go into the site.

Solution

This problem most readily can be resolved at the state level but USDOT should develop guidelines of ways for state and local governments to minimize costs. However, the possibility of a federal legislative solution should be explored.

6) Separation and Segregation of Hazardous Materials

Regulation

New regulations by Research and Special Programs Administration (RSPA) of DOT will impose restrictions on the separation and segregation of hazardous materials. The regulations will be costly to implement with no apparent increase in safety.

Why is it a problem?

RSPA's new requirements will be imposed for the separation and segregation of hazardous materials in transportation. The new rules increase the number of commodities and their combinations affected by separation and/or segregation requirements, without any documentation that these changes are required too improve safety. For example, the regulations require that certain materials must be maintained at a distance of 4 feet in all directions and at a height of 3.9 inches off the floor, or in a manner that will

prevent commingling of product in the event of an incident during handling normally incident to transportation. 4 feet and 3.9 inches are the measurements of a standard pallet, but have no relationship to safety in cargo loading. Using these measurements as a standard will cause problems for less-than-truckload motor carriers who would be required to maintain distances that have no relationship to safety concerns. Also, proper blocking and bracing of products cannot be achieved because these measurements will produce empty space in the cargo area. Loads will have to be divided, adding expense to the transportation of products that have travelled together without incident over the last 20 years. Other logistical problems regarding the movement of freight across the loading dock are caused by these restrictions as well.

Solution

These regulations should be replaced by a more rational scheme, based on a performance standard, that will allow better use of cargo space. ATA has petitioned RSPA to implement a changed system, but RSPA has thus far failed to act on the petition. This means that RSPA's existing rules will become effective October 1, 1993.

DRUG TESTING

7) Toothless Drug Testing Rules

Regulation

USDOT requires trucking companies to conduct comprehensive, expensive drug testing of drivers. However, if the company detects a drug user, USDOT forbids the company from disclosing the results to anyone unless the driver gives written consent.

Why is it a problem?

This makes a mockery of the drug testing program because a drug user who is detected and leaves the company can walk into another trucking company and get a job. All he/she has to do to pass the pre-employment drug test at the new job is to stay "clean" for 48 hours. The person can then drive a truck until he/she is caught again. The person can do this forever and never needs to show any kind of rehabilitation.

In some transportation industries, the loss of one's job can be a stigma. However, in parts of the trucking industry, annual driver turnover exceeds 100%. There is no stigma from changing jobs.

Solution

USDOT's rules should require the prior employer to disclose any positive drug test results during the previous three years. This could be accomplished by federal legislation, as well. See Attachment A.

8) Reduce Random and Periodic Testing

Regulation

USDOT requires trucking companies to randomly test 50% of their drivers.

Why is it a problem?

After empirical testing, there is no significant difference in the rate of positive tested drivers at a 50% and 25% random testing rate. DOT's regulations for its own employees, which include air traffic controllers, currently require random testing at the 25% rate. Reducing the random rate to 25% would save the trucking industry over $72 million, while not having a negative impact on safety.

Solution

USDOT should reduce the random testing rate to no more than 25%. For carriers who demonstrate an extremely low positive test rate and do not have an unsatisfactory safety rating, the testing rate should be at 10%.

Attachment A

March 1, 1993

THE COMMERCIAL DRIVER DISCLOSURE AMENDMENT

Section 12020(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2717(a)) is amended by adding at the end thereof the following:

The Secretary shall, within one year of the date of enactment of this amendment, adopt final regulations that require a potential employer to request, and prior employers to provide, any test information for a potential new employee that determined the employee used alcohol or a controlled substance in violation of law or Federal regulation within the previous three years. The regulations shall provide the potential employee with an opportunity to provide further relevant information about the test to the potential employer.

DISCUSSION

Under current and proposed USDOT regulations, a motor carrier cannot obtain positive drug or alcohol test results of an applicant for employment unless the applicant gives his prior written permission. This creates a serious safety problem, because a driver with an abuse problem who is detected at one company can move to a new company without fear of disclosure. The public on our highways deserves better.

This amendment would require potential employers to request, and prior employers to provide, positive drug and alcohol tests within the last three years. This requirement would apply only to drivers of commercial motor vehicles. These vehicles generally weigh more than 26,000 pounds or transport more than 15 passengers. Under existing section 12019, "employer" is defined to mean only a trucking company and "employee" includes a driver who is an owner-operator or independent contractor.

The driver is already comprehensively protected from inaccurate tests under the existing drug and alcohol testing rules. Furthermore, alcohol and rehabilitated drug users are protected from job discrimination by the Americans with Disabilities Act. This amendment would give the employee a further right to explain the circumstances of the positive test to the potential employer.

Mr. HARVISON. Thank you, Mr. Chairman.

Mr. LYNCH. Thank you, sir.

Mr. RAHALL. Our final panel is composed of Stephen C. Hansen, the President of Heritage Transport, Indianapolis, Indiana, and Chairman of the Chemical Waste Transportation Institute, accompanied by Cynthia Hilton, manager, Chemical Waste Transportation Institute, and J. Randy Kelley, Division Vice President, Sonoco Products Company, Semibulk Packaging Division, Hartsville, South Carolina.

TESTIMONY OF STEPHEN C. HANSEN, PRESIDENT, HERITAGE TRANSPORT, AND CHAIRMAN OF CHEMICAL WASTE TRANSPORTATION INSTITUTE, ACCOMPANIED BY CYNTHIA HILTON, MANAGER, CHEMICAL WASTE TRANSPORTATION INSTITUTE; AND J. RANDY KELLEY, DIVISION VICE PRESIDENT, SONOCO PRODUCTS CO., SEMIBULK PACKAGING DIVISION, ACCOMPANIED BY GORDON W. ROSSEAU, PACKAGING ADVISOR

Mr. HANSEN. My name is Stephen C. Hansen. I am President of Heritage Transport and the Chairman of the Chemical Waste Transportation Institute.

Mr. Chairman, Members of the subcommittee, Cynthia Hilton is also with me. She is a manager for the Chemical Waste Transportation Institute. And my son Jordan is also with me today.

I commend the Members of the subcommittee that crafted the legislation we know as HMTUSA. The overall framework of this act is sound but there are some refinements that could improve the efficacy of the act.

Also, our institute supports the timing of the reauthorization of the HMTA as proposed in H.R. 2178. This time frame coincides with the anticipated rulemaking that will implement the uniform and reciprocal State hazardous materials registration and permitting programs and procedures authorized by Section 22 of HMTUSA.

The institute served as the official industry liaison to the working group of State and local representatives established pursuant to Section 22. This group was charged to develop recommendations which will serve as the basis for the anticipated rulemaking.

While industry has some concerns with some of the recommendations, it is premature to discuss these issues pending the result of a two-year, four-State pilot program. However, there are a few important issues that deserve the subcommittee's attention today.

Uniform and measurable criteria must be established when permit applications are evaluated for acceptance and when there is a violation of the permit conditions by hazardous material transporters. Congress should insist such criteria be developed.

There is a difference of opinion about the degree to which the recommendations can dictate the formulas used by States to set fees. Congress should clarify that the regulations emanating from Section 22 can and should include formulas which can stand Constitutional scrutiny concerning interstate fee apportionment.

A number of fees have been authorized in the Section 22 recommendations. States should be required to report annually to DOT and Congress on the rates charged motor carriers for process-

ing fees, surcharge fees, and hazardous materials transportation activities or other uses to which the fees have been put.

We believe that immense gains will accrue from the uniform and reciprocal permitting and registration program in safety and the protection of the environment. Thus, the pilot States should continue to receive support until the Federal rules are finalized.

The Transportation Research Board report authorized by Congress to address the issue of hazard communication, highlights the consequences of insufficient or ineffective hazardous materials information during a release event. Unfortunately, we believe recent actions of DOT have, from an emergency response point of view, undermined the Class 9 hazard class designation as an effective or informative source for hazard communication.

We are concerned that the United States is retreating from its commitment to the spirit of international harmonization of hazardous material transportation requirements by the designation of "elevated temperature materials" and "oils" as Class 9 materials. DOT should use other hazard designations to distinguish such matters in domestic regulation from other categories of materials generally accepted by the United Nations in the Class 9 hazard class.

DOT has also eliminated requirements to use the Class 9 placard for domestic shipments which we believe compounds the information gap. The CWTI believes that in an emergency response situation where questions arise as to the nature of the materials in vessels involved in the release or those within close proximity, all cargo information is useful.

We believe the Class 9 placard should be restored pursuant to United Nations recommendations for domestic shipments.

We are also concerned about the lack of timeliness in the processing of applications for determinations of preemption. Congress should take whatever steps are necessary to remove impediments to the timely issuance of preemption determinations, including, if necessary, the authorization of additional resources.

We believe that the preemption process needs some streamlining as it pertains to the "substantially the same as" subject matters. The likelihood that these non-Federal requirements will survive scrutiny under the preemption determination process is remote. However, the burden to ensure that non-Federal entities do not go beyond Federal standards in these subject areas falls with industry.

We recommend that the burden to prove whether non-Federal requirements in the "substantially the same as" areas of regulation should rest with the non-Federal governments that wish to impose such requirements. Exceptions should be provided for requirements which are intended to address imminent hazards.

The preemptive framework laid out by Congress in HMTUSA has had a profound impact on the standing of non-Federal regulations affecting our industry. National uniformity has been tested in court and supported by recent EPA interpretations limiting the extent to which the Resource Conservation and Recovery Act grants States authority to go beyond Federal standards concerning the transportation of hazardous waste.

As a result, we have sought through this framework a greater level of uniformity and, thus, to foster compliance, enhance enforce-

ment and ultimately to increase the safe, secure transportation of hazardous waste.

This has often put us at odds with State agencies seeking to enforce their own requirements. Some of these agencies have declared their interest in seeking legislation to overturn the preemptive authority of the HMTA at least as it pertains to the transportation of hazardous waste.

We strongly urge Congress to resist such attempts and to reaffirm the purposes and goals of HMTUSA.

Finally, time precludes me from elaborating on our concerns about highway routing and minimum levels of financial responsibility. Let me refer you to the full text of my statement for our comments.

Once again, the CWTI appreciates the opportunity to share its thoughts, experiences, and concerns with you on this important topic. I would be happy to respond to any questions you may have.

Thank you.

Mr. RAHALL. Mr. Kelley.

Mr. KELLEY. Yes, sir. Thank you, Mr. Chairman.

My name is Randy Kelley and I am the Division Vice President of Sonoco Products Company SemiBulk Packaging Division. Essentially that is industrial containers. And we are a manufacturer of open head fiber drums.

With me today is Gordon W. Rousseau, who is a nationally recognized expert on hazardous materials transportation. I have submitted a written statement to the subcommittee which I will summarize for you very briefly. And I appreciate the opportunity to appear before you to speak briefly about RSPA's new rule HM–181 and how the rule and RSPA's initial denial of the fiber drum industries' exemption application will affect Sonoco and the entire domestic industry.

In brief, RSPA's action will eliminate the use of a safety proven and cost-effective package currently used for the domestic transport of certain hazardous liquids. RSPA's action will also eliminate the unique application of an American technology and severely impact a domestic industry.

Manufacturers of fiber drum packaging are concerned that the liquids packaging they currently recognize is not recognized by the now hazardous materials regulation HM–181 which were made final by RSPA in 1990. Up until now this packaging, open head fiber drums, has been specifically authorized for certain hazardous liquids in the existing regulations. In fact, the technology used by the fiber drum industry or the packaging of liquids has been uniquely developed in the United States and has been safely and successfully used for the past 30 years by the chemical industry.

RSPA's own incident reporting system demonstrates that we have an outstanding safety record, a 99.99 percent safe shipping record associated with currently authorized fiber drums during the past 12 years that RSPA has maintained such data. The safety of the open head fiber drum has been attested to by numerous customers.

We submitted comments to RSPA documenting the excellent shipping experience that these companies have had with the transportation of hazardous materials and fiber drums. A number of

these companies are Fortune 500 companies and include, by way of example, Olin Corporation, Chevron Chemical Company, Shell Oil Corporation, Borden, Incorporated, and so on.

These companies urged RSPA to reconsider its decision to disallow the continued use of open head fiber drums for the shipment of currently authorized hazardous liquids based upon their proven performance in service. However, because the fiber drum industry relies upon a unique American technology that is not used internationally, it faces a real economic threat.

This problem is due to the fact that the new international standards set forth in HM–181 are not experienced based but are rather theoretical bench marks recommended by the U.N. for evaluating the suitability of packaging.

At no time has any study or evidence been presented by the U.N., by RSPA or by any other international body that shows a correlation between real world experience and the projected safety of packaging under the new theoretical test criteria set forth in HM–181.

Thus, while open head fiber drums cannot be manufactured to meet two of the performance tests set forth in HM–181, this fact is irrelevant since these standards have never been tested nor shown to correlate with transportation safety in either the United States or internationally.

In this regard, Congress should note the fact that the U.N. recommendations after HM–181 is modeled are not completely uniform nor do they impose an absolute mandate. Nor have the standards been in use for more than a few years.

There is no established experience with these standards by any country. In fact, the U.N. recommendations were never intended to preclude domestic authorities from granting exceptions.

Specifically, paragraph 9.1.8 of the U.N. recommendations was adopted to allow participating countries to permit the continued use of existing proven packagings that would have otherwise been eliminated by the new standards. RSPA specifically supported and encouraged adoption of this provision.

Of interest to this subcommittee should be the fact that Canada, which was referred to by Mr. Roberts in his earlier testimony this morning, has relied upon paragraph 9.1.8 in authorizing the continued use of open head fiber drums in that country noting that there is no evidence of a safety problem.

In addition, RID, ADR, which are the European regulatory bodies, continue to allow the use of nonconforming light metal containers in the transport of hazardous materials.

Notwithstanding paragraph 9.1.8 of the U.N. recommendations, and Section 107 of the Hazardous Materials Transportation Act, which authorizes RSPA to issue exemptions, RSPA initially denied the domestic industries request for an exemption to HM–181. RSPA never cited safety as a factor in its denial. Rather, RSPA cited the fiber drum's inability to meet two of the HM–181 performance standards.

In this context, I must again emphasize that there is no experience with these new standards. They are not based upon a knowledge of how packaging meeting these standards will perform in the real transportation environment. The new standards were not de-

signed with this domestic technology in mind since it has not been used by other countries. Thus, these standards are irrelevant and unproven.

In lieu of the unproven performance standards, the fiber drum industry proposed specific performance standards to RSPA in its exemption application that have been used for years by the industry and that correlate with safety in the transport of hazardous materials. We feel that real-world experience is the best predictor of real-world performance.

We proposed to RSPA that these performance standards be met by the industry for continued authorization for domestic shipment only. Yet, RSPA denied the exemption request.

RSPA's action in adopting the unproven international standards and in denying our exemption request will result in serious harm to an American industry and its customers without any benefits. RSPA's rationale for this action seems indefensible, especially if it is for the purpose of imposing international standards for which there is no proven experience and no safety record onto a domestic packaging system with long-term experience and an excellent safety record.

Clearly RSPA's reasoning does not support closing plants, laying off employees and causing business hardships to the many companies that use and manufacture fiber drums.

At this time, I would also like to advise the subcommittee that Sonoco learned late on Friday that RSPA has decided to vacate and remand its denial of the 1992 exemption application. This was referred to again by Mr. Roberts and Ms. McMurray's earlier comments this morning.

However, we feel that it is important to point out that this decision does not mean that RSPA will grant the exemption since the decision was based upon a procedural technicality. It is entirely possible that RSPA will again deny the exemption application.

RSPA could also wait until as late as 1996 to make a decision since there is no required time period for the agency to reach a decision. If RSPA waits until 1996, or even as early as a year from now, the lack of a final decision in the near term will cause irreparable harm to the American fiber drum industry and its customers as they are forced to turn to the only alternative that currently exists. The fiber drum industry has already suffered from reduced customer orders because of RSPA's original decision to deny the exemption in January of 1993.

For all the reasons discussed here today, Sonoco believes it is important for this subcommittee and Congress to act upon legislation that will allow the continued authorization of the American open head fiber drum in domestic commerce. Unless Congress acts during the HMTA reauthorization process, the American fiber drum, which has proven to be a safe and cost-effective package, will lose a significant market in the American fiber drum industry and its customers will suffer very serious economic consequences.

That is the end of my remarks. I thank you for the opportunity to be here today and to be heard, and we would be happy to answer any questions for you.

Mr. RAHALL. Thank you, gentlemen, for your testimony.

I notice in the audience a colleague of ours that has spoken with me on this issue, and I welcome him to come forward at this point and make any comments that he would like to, the gentleman from South Carolina, Mr. John Spratt.

TESTIMONY OF HON. JOHN M. SPRATT, JR., A REPRESENTATIVE IN CONGRESS FROM SOUTH CAROLINA

Mr. SPRATT. Thank you, Mr. Chairman.

I didn't come prepared to talk, but I couldn't turn down the opportunity. There is in the back of the room here an example of a fiber drum. If you are like me, you have to see one to understand exactly what it is. In fact, one of my staff members was coming underneath the Capitol the other day and spotted one very much like that made by this firm, Sonoco. It is being used by the Architect of the Capitol and being used by the Architect to transport asbestos waste material, hazardous material, out of the Capitol, which is being removed by a firm and shipped to a landfill in Chantilly, Virginia.

He called the Architect of the Capitol's office to find out what he could about it, and the fellow he spoke to—we should have him here today to testify, because he was very effusive about these drums. This is hearsay, but we can find the name to back it up if need be. He said he liked these drums because of their rough and tumble character, their resilience. They served their purpose perfectly.

I think that is a good point to be made, there is an environmental upside to these drums that was not pointed out by Mr. Kelley in his oral testimony, although it is in his filed testimony.

Sonoco is a leader in recycling materials. The original drums are made largely or about half the materials are from waste materials, and these drums themselves, once used, are recycled again. The metal parts are removed and they are recycled again. They serve as one of the things we are certainly trying to emphasize here in solid waste reduction and efficient use of your resources. I think they have made an awfully good case for their position.

I should note for the record that I am a stockholder in Sonoco Corporation, but I am here because they are one of my constituents. They are in my district.

Thank you very much for the chance to speak.

Mr. RAHALL. Thank you.

We have commented on this drum a couple of times during the course of today's hearing. I told Mr. Roberts that he ought to take it out in the hall and kick it if he wants, drop it, or whatever.

Let me at this point recognize the gentleman from California, Mr. Baker, for his comments. I know he has a friend on the panel as well.

Mr. BAKER. Thank you very much.

After the gentleman from South Carolina spoke, there is nothing more that I can say, except that, as you mentioned in your testimony, Canada and a European country have passed a waiver to this.

Can you promulgate for us before we mark this bill up some regulations which would allow for the fiber drum and would state when it clearly should not be used, but when it is safe to use it

so that we can go and negotiate with DOT or work here within the committee?

Mr. KELLEY. Yes, sir, I believe we can. In fact, we proposed in our exception request a set of standards that would be used for the fiber drum specifically. These tests have been in existence for many years. We feel like they are a very accurate indicator for the performance of the container.

In answer to your question, yes, and I would be happy to have Mr. Rousseau here——

Mr. BAKER. We haven't had lunch, so I will forego that pleasure. I leave it to you to promulgate that for us. Our job is to be sure the transportation of hazardous materials are safe. It seems narrow to focus in and see we can only use the most sturdy. Sometimes it is not necessary, and there are other reasons where fiber drums would be more important.

Do U.N. regulations also eliminate the use of plastic drums and other materials?

Mr. KELLEY. They do not. If I could give you some background, when those recommendations were approved, the approving body consisted of a vast majority of Europeans. I think the original vote was 8 out of 11. The original voters, I should say, were eight out of 1 Europeans. That is significant because this particular fiber drum is not produced in Europe.

There is a real American advantage with this technology due to the low cost of paper and paper technology that exists in the United States. Therefore, it was given very little consideration, if any, when the original U.N. recommendations were approved.

Mr. BAKER. So they voted for what they made?

Mr. KELLEY. Exactly.

Mr. BAKER. Isn't that amazing? Could you provide us with a copy of their exemption requests to the committee for the record?

Mr. KELLEY. Certainly.

I want to commend you. I have a conflict also, but it is not with owning stock. It is with having a plant next door to me and the employees living in my district. California is a very impacted area for manufacturing. No one who can add a column of numbers stays in California. So anybody that has 150 employees is important to us. And as long as these materials have been used and have been proven safe, as they have, we want to continue using them.

So I would like to thank the Chairman for giving me time today, and thank you for your testimony.

By the way, we have a new Member of the committee that I also would like to introduce, Mr. Hansen from California.

Mr. CLYBURN [presiding]. I have a couple of questions, if I may.

I notice, Mr. Kelley, that you mentioned that the decisions made were not based on procedure. But the rejection of the exemption request was made on procedural grounds rather than anything substantive?

Mr. KELLEY. Our understanding was that there was new information, but the package of information that we were given really contained nothing that was new to our knowledge.

I think there were some statements that were made by other industries, but that is the only new information. And my understand-

ing is that information had existed for quite sometime. So that is an assumption on my part, that it is a procedural point.

Mr. CLYBURN. That is all. Thank you.

Do you have any questions?

Mr. MCKEON. No.

Mr. CLYBURN. I think we are being called for a Journal vote, but I think the Chairman has some questions he wanted to ask, so why don't we just recess for 10 minutes.

Rather than have a 10-minute recess, I think we might be able to finish up. Mr. Rahall is back now and maybe we can finish up.

Mr. RAHALL [assuming chair]. Let me just ask a couple of questions before we conclude.

On page 3 of your testimony you state that DOT is not issuing timely preemption considerations for State and local requirements imposed on the transportation of hazardous materials, and requests that this subcommittee inquire of DOT what impediments preclude such timely determinations.

Has the institute requested an answer from the DOT regarding this matter, and if so, what was their reply?

Mr. HANSEN. Yes, Mr. Chairman, we spoke with RSPA on several occasions about the timeliness of their processing of the preemption petitions and the rulings. Frankly, at the time we spoke with them the administration was not geared up to manage a lot of preemption inconsistency requests. So we only forwarded a few of the requests that we had that frankly were things we thought we could get a positive ruling on, and that there are several more inconsistency petition examples that we have in front of us that are just waiting to see the light with RSPA. But that is the nature of that request.

Mr. RAHALL. You state your concern relating to the preemption requirements that allows only for the enforcement of non–Federal requirements that are, quote, "substantially the same as the Federal requirements," end quote, and suggest that non–Federal entities should be required to submit to DOT for approval a listing of those requirements they believe are, quote,: "Substantially the same as Federal requirements," end quote, prior to enforcement.

Has the institute discussed this matter with DOT, and if so, what was their response?

Mr. HANSEN. I will let Ms. Hilton respond to that second part. But as far as the institute and hazardous waste haulers in the Nation, we have had several occasions where various States have promulgated the various rules governing the transportation of hazardous materials in their States, and even if different localities may have a time of day requirement, for instance, that was brought up before, or a communication requirement that they be different than what is employed by the DOT, et cetera.

So on several occasions it has been made aware that the various States had differing requirements, and as far as the response from DOT, that is something that you could respond to.

Ms. HILTON. Just briefly, to put it in perspective, only 12 petitions have been filed, and I think if you look at them they are typically in some areas substantively the same, because people want to succeed in what they are filing on. There are many, many, many

petitions we could file because of the diversity requirements to which we are to respond.

I had a conversation with the general counsel at RSPA informing them of this idea that we had, but nothing formal. There was no formal letter to them or response that I could share other than that. They knew that we had concerns in this area.

[Subsequent to the hearing, the following was received from Ms. Hilton:]

CWTI

Chemical Waste
Transportation
Institute

June 10, 1993

John Fryer
Counsel
Surface Transportation Subcommittee
B-376 RHOB
US House of Representatives
Washington, DC 20515

Dear Mr. Fryer:

During the Subcommittee's June 8th hearing on the Hazardous Materials Transportation Act, Chairman Rahall asked if there was information about the kinds and types of fees non-federal entities levy on the hazardous materials transportation industry.

As I mentioned to you after the hearing, the CWTI surveys states every two years to determine the types of fees imposed by states on the hazardous waste transportation industry. To contrast the fees assessed hazardous waste transporters, we also ask for some information about state-imposed fees on the transportation of hazardous materials generally.

In response to Chairman Rahall's inquiry, I am providing you with a copy of the Institute's latest biennial state hazardous waste fee survey. I request that the survey be made a part of the official record of the hearing.

This data also presents me with an opportunity to follow up on two issues we identified in our testimony. The first issue concerns the need to apportion fees levied on interstate transporters. Only one of the thirty-five states identified in the survey that levy hazardous waste or hazardous materials transportation fees provides interstate transporters an opportunity to apportion those fees. Discounting Oklahoma, which provides for fee apportionment, a motor carrier determined to transport hazardous waste in the remaining 29 states that impose fees on such transportation would have to pay up front $10,547 to operate one truck. If the same carrier determined to operate the same truck only in one state, the most the carrier would pay up front would be $1,800.

The second issue pertains to the willingness of states to share information about their fees with industry. As contrasted to past surveys, a couple of states were resistant to disclose information about their fees for this survey. Of particular concern was the request for the total amount of money collected during the state's latest accounting year. One state refused to disclose this information forcing the us to use the data provided by the state for the Institute's 1990 survey. We believe this reluctance stems in part from the preemptive language contained in Section 13(b) of HMTUSA. Section 13(b) provides that states and local cities may not assess fees on the transportation of

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hazardous materials unless those fees are "equitable" and "used for purposes related to the transportation of hazardous materials." Although no application for preemption has yet to be brought to DOT under the authority of this section, the ability of affected parties to do so is greatly inhibited without accurate, up to date information from states about their fees and those imposed by their political subdivisions.

We do not contest the ability of states to assess fees. The federal government depends on states to enforce federal requirements. Yet, the federal government is not prepared to finance such enforcement. The training and planning grants provided states through HMTUSA requires a 20 percent state match. States cannot be precluded from raising funds to advantage themselves of such grant programs. However, the ability of states to assess fees must be consistent with the requirements of Section 13(b). At a minimum, "equity" must include apportionment of fees for interstate carriers, and states must disclose the amounts collected and the uses to which those fees have been put.

We thank you for the opportunity to express our concerns to the Subcommittee and look forward to continuing to work with you during this current reauthorization.

Sincerely,

Cynthia Hilton
Manager

Enclosure

CWTI
Chemical Waste
Transportation
Institute

BIENNIAL STATE HAZARDOUS WASTE TRANSPORTATION FEE SURVEY ANALYSIS
December 1992

Thirty states assess some type of fee on the transport of hazardous wastes.[1] This represents a net increase of one state hazardous waste fee over that reported in December 1990. This compares with 14 states that assess some type of fee on the transport of hazardous materials -- a net increase of three. In five of those states imposing hazardous materials fees, carriers of hazardous waste pay the hazardous materials fee only, in seven of the states these carriers pay the hazardous materials as well as a hazardous waste fee, in one states carriers pay a hazardous waste fee rather than a hazardous materials fee, and in the last state, carriers of hazardous waste pay no fees.

Since December 1990, four states increased their fee assessments. At the same tim three states decreased fee assessments. The total amount of hazardous waste fees collected during the states' latest accounting year was $20,255,000. This figure does not include costs associated with various state bonding requirements, local permit fees, or sales taxes where applicable. This figure represents a 4 percent increase over the amount reportedly collected in the 1990 Biennial Fee Survey. The uses to which these funds were put vary. Twenty states reported that some or all of this money was dedicated for administration and enforcement of hazardous waste programs. In eight states, some or all of the money went to the general fun In twelve states some or all of the money went to state Superfund match accounts o other environmental cleanup activities. One state said the funds were used for training, and another used the funds for research. Only two states specifically said the money was used for transportation or transportation-related expenses such as emergency response.

All thirty states imposed fees on motor carriers of hazardous waste. Eights state imposed fees on rail and water carriers. Seven states imposed fees on air carrier

In the five year period covering 1987-1991, US/DOT reported 845 incidents involvin hazardous waste transportation. These incidents represent 2.2 of all hazardous materials incidents during the same period. The significance of this safety ratin is best understood in comparison with the number of miles hazardous waste is transported. Trucks, which carry 98 percent of hazardous waste transported off th site of generation, account for 6.1 percent of all hazardous materials truck-miles travelled by commercial motor vehicles that carry hazardous materials 50% or more the time. For the most part, vehicles that carry hazardous waste tend to be dedicated transport. When hazardous waste truck miles are compared to vehicles th carry hazardous materials 75-100% of the time, the figure rises to 12.7% of all hazardous materials truck miles. (Bureau of the Census 1987)

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[1] Since NSWMA conducted this survey in December 1990, two additional states have instituted hazardous waste transportation fees, but one state whose fees were reported as a hazardous waste fee in the 1990 survey were in actuality a hazardous materials fee.

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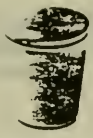
BIENNNIAL SURVEY OF STATE HAZARDOUS WASTE TRANSPORTATION FEES[1]
December 1992

ST	FEE	BASIS[2]/TRANSPORTER[3]	TOTAL 000's	YEAR[4]	USE[5]	HM	BASIS/CARRIER	HM APPLIES	HW INCIDENTS[6]	HM INCIDENTS[7]
AL	Y	500cAMW	56[8]	FY92[9]	AE	N			19	643
AK	N					N			2	57
AZ	Y	200i[10]AMRW	6	9Y91	SM,SE,AE	N			17	348
AR	Y	200cAMRW	30	FY92	AE	N			14	526
CA	Y	200c[11]AMRW75v39u	680	FY92	AE	N	100cM[12] 75 renewal	Y	68	2603
CO	N[13]					Y	10-400cM[14]	Y	11	563
CT	Y	500cM	176	FY92	GR,SE	N			4	309
DE	Y	300cM	42	FY92	AE	N			4	76
FL	N					Y	100cM[15]	N	19	1283
GA	N					Y	100vM25t[16]	Y	9	1077
HI	N					N			0	12
ID	Y	250vM20t	109	FY92	AE,T	Y	3uM5c	Y	6	104
IL	Y	250cMW20u	664	FY92	AE,R	Y	1000cM250v[17]	N	37	2922
IN	N					N			27	1011
IA	Y	25cM10t	86	FY92	AE,ER,SE,SM	N			6	764
KS	Y	250cMR	100	FY92	GR	N			19	742
KY	Y	25cM	17	FY91	AE	Y	25cM	Y	18	583
LA	Y	200tAMRW[18]	63	FY92	SE	N			34	829
ME	Y	100c[19].02p disposal .015p treatment/storage AMRW[20]	420	91	SE,AE	Y	.15/tonR[21]	Y	0	139
MD	Y	50uM20d	247	FY92	SE,AE	N			13	637
MA	Y	1600cM200v[22].182g/.0182p	6662	FY92	SM,AE,SE	N			12	495
MI	Y	500cM200u[23]	1382	FY92	GR	Y	95vM[24]	N	22	1127
MN	Y	500c[25]25vM	122	FY92	AE	N			6	743
MS	N					N			4	414
MO	Y	100cARW10-100vM[26]	400	FY92	GR	N			26	934
MT	N					N			0	61
NE	N					N			3	188
NV	N					Y	600-1500vM[27]100t	Y	9	178
NH	Y	600cMRW[28]100v100uM	269	FY92	AE	Y	5vM	Y	0	56
NJ	Y	225u25vM635-15,600c[29]600e AMRW	3,190	FY90	AE	N			18	937
NM	N					N			6	284
NY	Y	500uM25c5a[30]	2888	91	AE,GR	N			21	1311
NC	Y	600tM	60	FY92	AE	N			35	1454
ND	N					N			0	35
OH	Y	25c[31]3vM	45	FY91	GR	Y	5-250pM[32]	Y	73	2363
OK	Y	20uM[33]	47	91	AE	N			11	309
OR	N					Y	500cM70t	Y	21	378[34]
PA	Y	200cM[35]	2200	FY92[36]	SE,SM	Y	20vM[37]	Y	45	2936
RI	Y	100c100vM	80	FY92	GR	N			2	40
SC	N					N			17	378
SD	N					N			0	39
TN	Y	200cMR[38]	81	FY92	AE	N			25	1113
TX	N					N			49	2425
UT	N					N			4	388
VT	Y	10vM	29	FY90	TR	N			2	57
VA	Y	80cM[39]	2	FY92	AE	N			11	576
WA	N					N				48478
WV	N					N			5	216
WI	Y	250tM	100	FY92	AE,GR	N			14	825
WY	N					N			3	166

Mr. RAHALL. Mr. Kelley, I would appreciate it if you would submit for the record not only the original exemption request, as the gentleman from California, Mr. Baker, has noted, but the March 15th appeal of RSPA's denial as well as the October 16th, 1992 letter to RSPA from the FTIC.

Mr. KELLEY. Yes, sir, certainly.

[The information requested follows:]



FIBRE DRUM TECHNICAL COUNCIL

1400 L STREET, N.W.
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(202) 371-5840

FACSIMILE (202) 371-5950

June 8, 1992

Mr. Alan I. Roberts
Associate Administrator
Office of Hazardous Materials Safety
Research & Special Programs Admn.
Department of Transportation
Washington, DC 20590

Dear Mr. Roberts:

On behalf of the Fibre Drum Technical Council, this is to advise you that a request for a DOT exemption to authorize the continued domestic use of certain fibre drums to ship specified hazardous materials was filed today with your Office. An exemption is necessary because certain drums in wide industrial usage for some hazardous materials do not meet the specifications for fibre drums that have been prescribed in final rules under Docket HM-181, Part 178. As HM-181 currently stands, only UN/DOT specification drums will be permitted for shipment of the hazardous materials in question as of October 1, 1996. We believe that at issue here is whether American industry shall be allowed to continue a practice that has withstood the test of actual experience. This is not a request for a new activity.

The Fibre Drum Technical Council participated conscientiously in the activities leading up to the final rule making. This involved two responses to the Notice of Proposed rule making dated February 26, 1988 and May 25, 1988, petitions for reconsideration dated March 12, 1991, and April 2, 1991, and two meetings with you and some of your staff in March 1988 and on March 14, 1991. Our serious business concerns were presented by several members attending both meetings; we presented you with evidence showing that there was no safety issue, and that HM-181 as proposed would seriously damage the fiber drum industry and more generally the American chemical industry. In fact, at the last meeting, there seemed to be a recognition of the real problem we faced which was not due to any safety problem or failing on our part. Thus your final decision came as an unexpected and disappointing surprise.

In addition, during the process, a number of our customers learning of these rule making difficulties, took upon themselves to write to you expressing their concern to assure continued usage for what they noted was a very satisfactory and desirable container. For many customers our drums had become very popular because they resolved several environmental problems which HM-181 would now cause to be revisited. To be able to better protect the environment

and continue to use a satisfactory container that delivered their product with no customer or carrier complaints was truly important for these companies. Several of them approached us during the process to ask how they could help when advised of the threatened loss as set forth in the Notice Of Proposed Rule Making. They sought our guidance on how they should address you with their concerns. We thus became very conscious of the important need our drums had filled in the marketplace.

The exemption request is also consistent with the Administration's stated objective as set forth in the Federal Register of February 7, 1992, to avoid rules that unnecessarily burden American society and industry with no benefit or return for the investment. From the perspective of the Fibre Drum Industry and its customers, the rule making will take away a container that has become increasingly useful in today's society. The package is designed to efficiently and safely deliver its product. The containers covered by the exemption request have been doing so for many years under DOT regulation. The packagings have been specifically recognized as far back as the early 1970's. Hundreds of thousands of shipments have taken place without any ill effects. While the law under which the DOT operates gives it significant latitude, it is not within its spirit to destroy American enterprise. To deny the American fibre drum industry continued authorization for this application is to arbitrarily impose significant costs which will be detrimental to the American chemical industry. This is not of any benefit to society or industry.

SAFETY

Under Docket HM-57, during the early 1970s, most of these materials first became regulated because of a DOT definitional change for corrosive materials. DOT nevertheless did specifically recognize the acceptability of this packaging then in use as being safe and adequate for the same products which are described in the enclosed exemption request. The Agency specifically authorized this packaging under its new final rules at that time stating:

> "Meanwhile, the available record does not support that § 173.249a would result in unsafe practices. It is important to note that the descriptions set forth in § 173.249a will permit the Board to monitor the adequacy of the [non-DOT specification] packagings authorized in this section through its hazardous materials incident reporting system." (Emphasis mine.)
>
> (*FR 38 35467, December 28, 1973*)

Thus, not only did DOT permit non-DOT specification packaging, but it embarked on a project to determine if this decision could be maintained. Meanwhile industry continued with its development and investment. All this was undertaken from a safety perspective as would be expected under HMTA. In the Notice related to the above rule making, the Agency further clarified its objectives:

> "A new § 173.249a is proposed to prescribe packaging for these materials. Meanwhile the Board has been inquiring into the strength of some of the packaging referenced to determine if upgrading of the packaging is warranted and feasible. Depending on the outcome of the Board's review and the records of experience that it gathers regarding the shipment of materials in these packages, the Board may propose further rule making in this area.
>
> (*FR 38 24915, September 11, 1973*)

The text immediately above is what preceded the 1970's decision reported on the previous page to authorize the fibre drums that are subject of this letter. The decision making process is clear and based on safety concerns. The industry was thus fairly put on notice that it was under scrutiny. But what followed was extraordinary successful shipping experience. This is shown in the data submitted in the exemption request and by DOT's own safety records. The results of expanded usage actually resulted in better experience than what appeared with other packaging, such as metal drums. Thus what happened to change DOT's original approach is unclear. Certainly, as is reported by the data taken from DOT's incident reporting system, nothing indicated a problem with the original decision nor a change in field use circumstances. Thus the final rule in HM-181 not to permit packaging that had been so successful came as a total shock to the industry. It was honestly unprepared in view of the experience.

EXPERIENCE

Considering the position of the Agency, during the Docket HM-181 rule making, the fibre drum industry through its Fibre Drum Technical Council ("the industry") noted the fact that such drums had been successfully shipped both before and after the HM-57 rule making with no indication of a safety problem. The industry petitioned for continued use which was surprisingly denied. The Agency did not cite a safety difficulty or anticipated new risk. For more than 30 years, the chemical industry had been shipping the chemicals identified in the enclosed exemption application in the drums described therein. Prior to about twenty years ago, most of these products were not even regulated.

Mr. Alan I. Roberts
Associate Administrator
June 8, 1992

DOT based its position for cancellation of the packaging on upgrading of "package integrity." It did not offer supporting data to show that there was any deficiency with the currently DOT-authorized fibre drum packaging. It appears to have based its decision entirely on consistency with international standards. With the lack of interest shown by other parts of the world to this novel American technology, and by adopting standards that met worldwide standards knowingly ignoring this same technology, the "international system" as viewed by the DOT thus is cutting short successful American development. The DOT decision would deny American industry technical advantages in production not available by choice in other parts of the world.

In recognition that these drums are not manufactured in Europe, note further that American industry is not asking that its containers be recognized in Europe. It is willing to let the marketplace decide that. In recognition of the Agency's concerns with international uniformity, the industry is now specifically proposing a new restriction in its request. It will limit the scope of the packaging in question to uses that will not affect international trade or otherwise involve the international standards adopted by DOT with respect to other countries.

But what it is asking is the permission to compete in its own country without being forced to try to develop costly new technology which would provide no improvement in function or safety. The Fibre Drum Technical Council bases this conclusion on its members excellent experience record in shipping hazardous materials in the drums. **There is no existing commercial, open-head fibre drum for liquids either in Europe or the United States that meets the UN requirements.** Recognition of a proven technology that has been demonstrated during more than 20 years of satisfactory experience should not be rejected. Actually, it remains a serious unanswered question in manufacturers' minds whether it would be possible within market restraints to develop such a UN container.

Furthermore, considering the experience, the drums that are being denied usage by DOT will be acceptable by its neighbor Canada, which country has been in the process of adopting the same standards that are the subject of DOT's Docket HM-181. That country in stated consideration of its own established industries on December 18, 1991, opted to allow within its borders, continued usage of containers not meeting so-called international standards where the former packaging can be continued without a detriment to safety. In a strange turn about, industry members with facilities in Canada are being authorized to continue manufacturing while counterpart plants in this country will not be able to offer this packaging here for the same uses. Yet both countries subscribe to the same international standards. The industry appreciates, however, that the Canadian decision came after the DOT decision. In preparing the HM-181

"corrections" document DOT did not have the benefit of Canada's thinking with regard to continuing existing authorized packaging;

ENVIRONMENTAL

The question herein discussed has additional important benefits in today's environmentally conscious society. Paper from fibre drums is recycled whereas steel drums are reconditioned in a more limited manner, and often are disposed of at Superfund sites. In fact, the paper industry is the largest recycler among industries in the United States. As DOT knows, given the Agency's concerns about environmental issues, the federal government has continually defined recycling as a primary goal in its waste management strategy. In a report issued in 1989, for example, the Environmental Protection Agency ("EPA") stressed its preference for recycling over disposal because recycling more effectively reduces risks to human health and the environment, conserves energy, slows the depletion of nonrenewable natural resources, and delays the exhaustion of landfill space – which is now growing scarce. (U.S. EPA, The Solid Waste Dilemma: An Agenda for Action 10 (1989).) More recently, EPA restated its preference for recycling – increased recycling is one of three goals that EPA has identified "to bring our municipal solid waste management problems under control." 56 Fed. Reg. 50980 (1991).

Given the emphasis on recycling, and the fact that the materials from fibre drums are recycled, DOT must give serious consideration to the exemption request in question. In short, the preservation of the domestic fibre drum industry is vital for packaging as an option if we are to achieve the goals of recycling and preserving the environment.

It is well known in environmental circles that the friendliest material to our environment may be paper. This industry is the furthest advanced in recycling its products. Disposal of its products either through ageing, burning or recycling is described as the least burdensome to our environment. The DOT action would have for a result to shift packaging materials usage in large volumes to other less environment-friendly materials.

NEGATIVE SOCIETAL AND BUSINESS IMPACT

The Council's petition affects many background circumstances at a difficult time in our economy. Review of these facts illustrates why the projected DOT action will result in serious harm to an American industry without any demonstrated fault regarding this industry's products. The reason for the action thus seems inexplicable unless it be for purposes simply of uniformity. By itself, uniformity is not a reason to close plants, lay off people, and cause business hardships

through the many companies that use the fibre drum industry's products. This results from the fact that most cost increases must be passed on to the user, and finally the consumer, which in this case would result in higher outlays without improved benefit. This is evidenced by the excellent safety record reported in the exemption request for the containers that would be displaced. This leads to inflation being caused by unnecessary regulation. This topic is discussed in more detail in the exemption application.

On October 1, 1996, the chemical industry is expected to stop shipping formerly authorized drums currently used to ship tens of thousands of DOT and EPA regulated products. This is because, as of that date, UN/DOT Specification fibre drums will be required for these products. The drums in question cannot meet these specifications without financial investments making these units prohibitively expensive. It was reported earlier to DOT that the base cost of these drums would increase by at least 60%. For competitive reasons, this would assuredly result in usage of other less environmentally desirable packaging where drum sizes are needed to be used. In the industry's exemption application referenced above, compelling evidence strongly supported by real shipping experience is presented showing that there is no evident safety basis for decreeing this destructive decision for the American fibre drum industry.

The fibre drum industry's HM-181 petitions of March 12, and April 2, 1991 noted its solid experience with the container type in question, and in addition pointed out the significant detrimental financial effect that the DOT action would have on the industry. More detail is presented on this issue in the exemption that is being filed.

The background to the industry's petition stated that the reason that the drum had elicited no interest in other parts of the world was due to American manufacturing capabilities and raw materials that were costly to duplicate elsewhere. There was no interest in licensing by Europeans of this advanced technology. This came in writing from a major European manufacturer of fibre drums. It is important to note that not because of inadequacy but rather due to manufacturing costs that can be more efficiently controlled in this country was the technology rejected. The American fibre drum industry did offer to license its technical know-how. The European industry refused to license the technology noting that manufacturing materials and techniques used here were not readily available in Europe at a competitive cost.

GOVERNMENTAL SUPPORT IN FACE OF COMPETITION

The DOT decision results in prohibiting American technological advances to American industry in its own country, a technology that it is willing to limit to its own country if others

fear its competitiveness. The current DOT decision could be interpreted, however, to permit foreign competition with its "standard" designs to thus control and in fact repress American development. Thus, a decision prohibiting usage of certain advances in technology which never shows that this technology is deficient from the safety perspective, seriously hurts American enterprises. By not basing its decision on identified safety deficiencies, DOT, unwittingly surely, but nevertheless creates a boon to foreign manufacturing competition which consciously opted against these improved manufacturing techniques for cost reasons peculiar to the foreign situation.

By adopting the European position, DOT regulatory standards result in denying a viable option that would severely injure this American industry. Production of drums meeting the HM-181 performance standards (assuming that it is technically and economically feasible), while maintaining the present industrial quality level would force the American industry to manufacture drums costing 50% greater than imported or domestic competitive packaging without any known improvement in function or safety.

CONCLUSION

With DOT's regulatory decision as it stands, American fibre drums of this type will be unable to compete for market share. The application describes in detail the benefits that this technology brings to the packaging environment for hazardous materials. Using pre-HM-181 criteria, the drums being produced today compete successfully with the "international standard" drums. The benefits to the consumer and the environment in using improved manufacturing techniques will be destroyed by the DOT rule. This is because the test methods required penalize users of this superior American structural design based on real-life performance reliability through the manufacturing quality control enhancements described in the application.

While industries of other nations have made no effort to develop technology to provide the ability to retain liquids in open-head fibre drums, the American industry has forged ahead innovating a totally new technology. This creativity is being penalized as the changes DOT has promulgated would set this industry back to its earlier position. The American fibre drum industry asks that the U.S. Department of Transportation recognize it is creating a domestic hurdle against its own industry preventing the expansion of superior technological manufacturing methods in which substantial investments have been made, a technology which has been proven in actual performance not to be inferior, but only different.

Mr. Alan I. Roberts
Associate Administrator
June 8, 1992

In view of these considerations, therefore, the American fibre drum manufacturing industry has decided to file for a domestic exception, a DOT Exemption. It is requesting issuance of a limited DOT Exemption that will allow it to continue producing the drums it has been manufacturing for over thirty years for the products which have been authorized in these drums during that time and will continue to be so authorized until October 1, 1996.

The Fibre Drum Technical Council's application meets the requirements of the DOT regulations for an Exemption under the Agency's procedures to recognize new or different manufacturing techniques. The application is based on solid safety evidence that these drums which have been in extensive use for over thirty years, are reliable containers. It petitions, therefore, that DOT recognize this unique situation and afford the American fibre drum industry the opportunity it seeks to compete against drums made from other materials, and relying heavily on European technology, that have not shown any safety benefits.

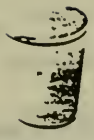
A copy of the subject exemption application is enclosed.

Sincerely,

Gordon Rousseau
Technical Advisor

cc: Andrew H. Card, Secretary, DOT
Travis Dungan, Administrator, RSPA

Enclosure: DOT FDTC Exemption Application



FIBRE DRUM TECHNICAL COUNCIL

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Monday, June 8, 1992

Ms. J. Suzanne Hedgepeth
Office of Hazardous Materials
Exemptions & Approvals
Hazardous Materials Safety
Research & Special Programs Admn.
Department of Transportation
Washington, DC 20590

Dear Ms. Hedgepeth:

On behalf of the Fibre Drum Technical Council, this is to request that an exemption be issued to continue the authorization for the use of certain fibre drums that are currently authorized to be shipped until October 1, 1996.

This authorization covers limited materials as specified in 49 CFR 173.249a and other sections of the pre-HM-181 regulations where non-DOT specification drums are permitted.

The Fibre Drum Technical Council has prepared a series of Fibre Drum Standards that are for the purpose of establishing an industry specification for these drums. As described in the request, the exemption is to be limited to only certain lower level hazardous materials to be shipped only within the United States. It is further limited only to fibre drums as specifically described in the exemption and by the FDTC Standards enclosed with the exemption request.

I stress that this request is not for any new products not heretofore authorized for shipment in these drums, is limited to use by American members of the Council and relates to specific industry specification containers.

Sincerely,

Gordon Rousseau

Gordon Rousseau
Technical Advisor

Enclosure: DOT FDTC Exemption Application

June 8, 1992

EXEMPTION APPLICATION

Pursuant to Title 49, Code of Federal Regulations, Section 107.103, this is to request a DOT exemption to provide for the continued shipment of fibre drums for specified chemicals, which drums would no longer be permitted to be used after September, 30, 1996.

1. **Regulations Affected:** Title 49 CFR § 172.101, insofar as certain other packaging is required under DOT Docket HM-181 final rules for products identified in this proposal.

2. **Applicant:** Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005, on behalf of the Fibre Drum Technical Council (FDTC) members identified in Appendix A

3. **Description of Proposal:** Non-DOT/UN specification open-head fibre drums are proposed for specified liquids and solids as identified in paragraph 4 below, such drums to be constructed according to the applicable specific FDTC Standards described herein and accompanying this application. These drums are to be used only for shipment in this country, in Canada, and in such other countries in this hemisphere as will accept such drums as described here below, with such ladings as requested herein. It is noted, considering the final rules published by Canada (Canada Gazette–Part II) on December 18, 1991, these drums are acceptable under the hazardous materials rules in that country for domestic shipment there also, but without necessity for an exemption.

Fibre drums identified herein to be used for the materials specified, are to be specially marked with the DOT exemption number followed by the Packing Group for the material, e.g., 00000/II, thereby certifying that such drums comply with §§ 173.24 and 173.24a. In addition this marking added to the exemption marking would certify that the fibre drums are capable of meeting the following special structural and performance conditions as appropriate for the specific lading, including for the appropriate Packing Group where reference is made below to a DOT/UN test described in 49 CFR Part 178:

1. § 178.606, stacking test;

2. § 178.608, vibration standard;

3. Appendix B: FDTC Standard 101 for Compatibility Testing;

4. Appendix C: FDTC Standard 110 for Joint Integrity;

5. Appendix D: FDTC Standard 120 for Leakage Spray Test;

6. Appendix E: FDTC Standard 130 for Weatherproofing;

7. Appendix F: FDTC Standard 140 for Fibre Drum Structure; and

8. Appendix G: FDTC Standard 150 for Impact Testing.

4. **Commodity**: It is requested that these packagings be authorized for use in shipping limited and specified hazardous materials appropriately identified as provided under the HM-181 amended rules. These are identified as follows:

1. liquids classed as flammable liquids having a flash point of 73°F or higher,

2. solids described as aluminum metal powder under § 172.101;

3. solids which are nitrates classed as oxidizers and that are not of Packing Group I;

4. solids classed as corrosive materials that are not of Packing Group I, or

5. liquids or solids meeting the description for environmentally hazardous substances and in Class 9; or

6. liquids classed as corrosive materials that are not of Packing Groups I, and that further meet one or more of the following specific descriptions:

    a. a liquid cleaning compound that contains no other material meeting § 173.136, except phosphoric acid, acetic acid, and not over 15 percent sodium hydroxide or potassium hydroxide;

    b. a liquid dye intermediate consisting of a ring compound containing an amino, hydroxy, sulfonic acid, or quinone group or combination of these groups, and not otherwise specifically named in § 172.101;

    c. a liquid textile treating compound mixture used to treat woven, knit or otherwise manufactured fabrics and not used only to treat fibers, filaments, or yarns used in making the manufactured finished goods;

d. a liquid coal tar dye; or

e. a liquid mining reagent.

5. **Shipping Experience:** We have reviewed company records and the DOT records with respect to shipment of hazardous materials in these drums since 1980. In this period of time, over 13,000,000 drums were built for use in shipping the above materials. Our review of the DOT incident reports reveals that in the 12-year period 1980 through 1991, there were only a total of 1487 incident reports filed with DOT indicating a failure of some type with these fibre drums of all kinds, containing hazardous materials of widely varying types.

For liquid hazardous commodities authorized in non-specification drums, and shipped in 50-gallon size or larger, there were only 190 incidents, which is an extremely low failure rate. There were 265 incidents involving containers of less than 50 gallon capacity, a statistic which is curious and that we are going to try and further evaluate inasmuch as far fewer of these size containers are typically built. In this total of 455 failures, 407 involved units that could be identified as containing § 173.249a materials. The 48 other containers carried other authorized materials, mainly flammable liquids. In the case of flammable liquids, we assumed the flashpoint was above 73°F, which materials could have been permissible in the non-DOT specification drums. However, noting the number of corrosive and poisonous liquids covered in the DOT reports that are not authorized in non-DOT specification drums, it is safe to say that some of these flammable liquids should not have been in these drums as well. But in any event, the statistics support the total reliability of these containers.

The remaining 1032 (1487-455) incidents involved either materials that according to the product shown in the DOT reports should not have been packaged in non-DOT specification units. were in DOT-21P or DOT-21C units, or were other non-DOT specification units that contained solids.

In contrast, in the same period, DOT received 20,277 incident reports covering failed metal drums. Contrast the fibre drum total production of 40 million units of all types to the steel industries 90 million units in service per year, and you can see that the failure rate of the fibre containers is remarkable and attests to their exceptional reliability for hazardous materials.

It firmly supports that these non-DOT specification fibre drums are reliable for hazardous materials service. Denial of their usage in these services is manifestly without safety related cause. In view of the economic hardship, the consequences are not reasonable to inflict on this industry.

The fibre drum industry is completely unable to meet the new UN/DOT specifications without incurring significant costs and investments, which would make these drums prohibitively expensive in the marketplace. This is because based on their past experience, no market return can be shown for the additional expenditure that buyers would be called upon to make. As DOT

knows, the fibre drum industry has previously represented to the Agency that the base cost of these drums would increase by a substantial percentage if fibre drums must meet the new specifications, thereby eliminating any competitive edge that the industry now has or may have in the future.

In support of this exemption request, the Council has attempted to specifically identify the additional costs that would result from redesigning the drums to meet the new specifications. Accordingly, cost information was forwarded to Counsel for the Fibre Drum Technical Council (M. A. Hill, Winston & Strawn) in a privileged and confidential manner in order to ensure compliance with antitrust laws and regulations. For purposes of this exemption, Counsel has reviewed the confidential information forwarded by members and has determined that the average percentage increase related to redesigning the fibre drums to meet specifications is 50 percent. (Counsel is willing to arrange for providing this confidential information to the Agency in the context of support for this exemption request if DOT requests this information.)

As pertinent here, the number of units to which the 50 percent increase applies represents a substantial portion of the fibre drum industry. Accordingly, it is clear that a decision by DOT to deny this exemption request will virtually eliminate a significant portion of the fibre drum industry since all competitive advantages resulting from the cost-effectiveness and efficiency of the domestic industry will have been lost if the drums must be redesigned to meet the new specifications.

We emphasize, in addition, that the fibre drum totals are particularly reflective of non-DOT specification packaging volumes since the production of DOT-21P units is now under 100,000 units per year and has been dwindling annually. Meanwhile market growth for non-specification units as described in Paragraph 3 above, has been rising by 8% per year and their use for hazardous materials has been expanding. Thus it is clear that while fibre drum containers are being used in large numbers, the containers being placed in service are actually the non-DOT specification units including the ones made to our industry specifications described above, and not the DOT specification containers.

These cost factors are made a part of this petition because they are extremely critical to this small but important industry in our country. Historically, until a few years ago, steel containers were the mainstay of our 55-gallon size shipping systems. This has been changing. The chemical industry is finding that other means need to be made available so that an assortment of packagings remain available to permit businesses in this country to optimize packaging decisions with respect to environmental and other factors. For some situations steel drums may be the desirable approach for certain users. Plastics have become a viable alternative but the difficulties of disposal have resulted in some concerns, although there are indications that the nation's energy concerns may be favorably related to their increased usage. Plastics have made it clear that broader policy considerations need to be included for thorough packaging development evaluations. Fibre drums are an option for the coming generations because in a significant number of applications, industries have already been better able to deal with

environmental packaging concerns. This aspect is discussed in more detail below under paragraph 8, *Level of Safety*.

6. **Transport Modes:** Authorization is sought for shipment by rail and highway, solely within the United States.

7. **Duration of Exemption:** It is requested that this exemption be issued for a renewable, two-year period.

8. **Level of Safety:** It is clear from the detail given above that this request is not intended to allow any nondescript, so-called "non-specification" packaging but rather to specify only fibre drums that are subject to a rigorous industry quality control system and specific design limitations. Thus the request is not open-ended. It further has been purposely structured so that the packaging encountered in the field can be verified to assure compliance with the terms of this exemption. Containers must be specifically marked to indicate compliance with the requested exemption. Therefore, the packaging proposed will be capable of being easily evaluated for compliance.

Note from the detail furnished in this exemption, that the fibre drum industry is not requesting authorization for non-specification drums, but rather for drums meeting a DIFFERENT FDTC specification, in many respects much more detailed and rigorous than DOT's new standards. The proposal differs from the new DOT rules but, on the other hand, it substitutes several other significant, measurable criteria to assure the production of equally reliable quality packaging.

The detail under shipping experience above clearly supports that from the public interest perspective, a safe container results. This is known factually by the lengthy and high volume good experience backed by DOT's own in-house incident reporting records.

The urgency of this request, and it is extremely urgent, is based on DOT's unwarranted withdrawal of authorization for the use of the fibre drum industry's current containers and the consequent effects on American businesses who are already starting to feel the effects in reduced customer demand. It seeks recognition for serious business reasons that the HM-181 DOT specifications are not the only possible way that a container for hazardous materials can be safely designed and used. For DOT to reject this petition would be saying that there is no other way than currently published in 49 CFR Part 178 that a container in this country will be permitted, no matter what degree of proof is presented showing that a container can be constructed for safe usage with the hazardous products listed in this exemption application.

Experience and history patently demonstrate that there are few absolutes when it comes to engineering and design originality. New ways of meeting objectives are constantly being

found. This is how our nation and others have progressed. For DOT to set aside this request is to refuse to recognize another system that HAS WORKED in favor of a new system that is dramatically more costly for manufacturers, for the user and, eventually, for the consumer who benefits from the products to be shipped in these drums. Rejection of the fibre drum industry's approach based on the experienced safety of its products would have to be viewed as arbitrary since the objectives assigned the agency by Congress are being met, i.e., demonstrably safe containers for the transportation of hazardous materials in this country.

Environmentally, scientists and legislators alike are constantly seeking the obvious benefits of making packaging from materials which have high recycling potential and low polluting risks. Steel drums are not plastic drums, and fibre drums are neither. Each has its benefits and applications. To subject all packaging to the same structural criteria is over-simplification. One packaging system may draw its strength from the flexibility of materials while another will rely on strength in stiffness. They are distinct container systems and they need to be evaluated differently to achieve the desired quality, safety, and beneficial effects for our society. The fibre drum industry's standards illustrated above allude to the special criteria for its drums which admittedly would not all be appropriate to other packaging (which may have other compensating features), but these are important for fibre drums to achieve equivalency or better.

The experience record illustrates that this approach works since fibre drums for years have been successfully transported even while these standards have been in a development stage within our industry. DOT's adamant "one system" approach would deny users this successful research in equivalency that permits using and enjoying the environmental benefits of a different product.

If any questions arise regarding this application, please contact these offices directly.

Sincerely,

Gordon Rousseau
Technical Advisor

Enclosures: FDTC Member Participants
FDTC Standards

APPENDIX A

FDTC MEMBERS

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STANDARD 101

Revision No. 0

COMPATIBILITY TESTING

I. GENERAL

Compatibility of product contact materials (linings, sealants, etc.) is determined on lab scale by direct exposure to the commodity to be packaged for a predetermined time at elevated temperature.

II. APPLICABILITY

For fibre drums intended for the packaging of liquids.

III. TEST METHOD

A. "BOAT" TEST DESCRIPTION

In the "boat" test a six inch square of lining material is folded and stapled into a five-sided cube, or "boat". During the folding operation the lining material is sharply creased and thus deliberately damaged in a way similar to what would be expected during the crimping process in manufacture of the drum, thus imposing residual stresses in the plastic. The creases are exposed under the liquid level to the product inside a tightly closed 8 oz. wide-mouth jar. The jar is placed into an oven or environmental room at elevated temperature for a predetermined time, and is periodically examined for evidence of stress cracking (straining at folded edges or corners of the boat). Samples of other product contact materials (caulking, gaskets, etc.) may be placed with the boat during the test for evaluation of any interactions (swelling) between the product and the material.

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STANDARD 101

Revision No. 0

B. CONDITIONS

Boat tests may be run under any appropriate set of time and temperature conditions. Typical conditions might be 130°F for 30 days, with periodic examination allowing earlier termination of the test if damage becomes apparent.

IV. CRITERION FOR PASSING THE TEST

No stress cracking of the lining material in the damaged areas of the boat, as indicated by staining of the boat in those areas. Since occasional false positive results occur, caused by transfer of product over the top of the boat by capillary action along folded edges, positive results must be confirmed by unfolding the boat, allowing it to dry, and determining the existence of breaches in the lining material by wetting the plastic side of the suspect area with alcohol or with an alcohol solution of a dye. Breaches will be identified by stains where the alcohol and/or dye penetrates through the plastic barrier into the paper below. If no staining occurs it can be assumed that the test result was a false positive.

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STANDARD 110

Revision No. 0

JOINT INTEGRITY

I. GENERAL

Fibre drums intended for liquid packaging require more tightly crimped and caulked joints than drums for less critical applications.

II. APPLICABILITY

For fibre drums intended for the packaging of liquids.

III. TEST METHOD

Joint integrity is determined in a design type test by filling a drum with water containing a wetting agent (a squirt of liquid dish detergent, e.g., "Joy") and subjecting it to a vibration test as described in 49 C.F.R. 178.608. After the vibration test both the interior and exterior of the drum in the vicinity of the bottom chime joint are examined for "staining", darkening of the paper caused by penetration of the liquid through the joint and into the paper of the sidewall and/or the bottom heading.

IV. CRITERION FOR PASSING THE TEST

A drum passes the test if after a one-hour vibration test performed in accordance with 49 C.F.R. 178.608 there is no observable staining of the interior and exterior of the drum in the vicinity of the bottom chime.

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STANDARD 120

Revision No. 0

LEAKAGE SPRAY TEST

I. GENERAL

For integrally lined fibre drums for the packaging of liquids, instead of the leakproofness tests specified in 49 C.F.R. 178.604 and Appendix B of 49 C.F.R. Part 178, a Leakage Spray Test designed to identify any breaches in the plastic lining must be performed. The material to be used for this test shall be a denatured alcohol or equivalent.

II. APPLICABILITY

For integrally lined fibre drums intended for the packaging of liquids.

III. NUMBER OF DRUMS TO BE TESTED

Each integrally lined fibre drum manufactured for the packaging of liquids must successfully pass the Leakage Spray Test.

IV. TEST METHOD

All interior seams and joints of the (plastic lined) surface of each drum must be sprayed with denatured alcohol or equivalent in such a way that the target drum areas are wetted. The interior surface of the packaging shall be examined for "stains" (dark spots in the paper indicating that the fibre has been wetted).

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STANDARD 120

Revision No. 0

V. CRITERION FOR PASSING THE TEST

A drum passes the Leakage Spray Test if no "stains" are observed during the examination described above.

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STANDARD 130

Revision No. 0

WEATHERPROOFING

I. GENERAL

If the fibre drum is intended for outdoor or high humidity storage, the body must be wound using a non-water soluble setting tube winding adhesive. Drums of this construction are essentially impervious to moisture, even if the outer plies of the drum are lacerated or abraded. They may, therefore, be stored outdoors in high humidity environments, such as the hold of ship or tropical warehouse, for an indefinite period of time.

II. APPLICABILITY

Fibre drums intended for outdoor or high humidity storage.

III. TEST METHOD

The moisture resistance of a fibre drum must be measured by subjecting the drum randomly selected from production to a 72-hour shower at a water flow rate of one inch per hour (with or without prior damage to the outer plies of the drum), followed by a compression test.

IV. CRITERION FOR PASSING THE TEST

The drum must lose no more than 15% of its compression strength after a 72-hour shower, and still be capable of passing the stacking test in 49 C.F.R. Section 178.606.

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STANDARD 140

Revision No. 0

FIBRE DRUM STRUCTURE

I. GENERAL

Fibre drums are containers made by the convolute winding of multiple plies of paperboard into an adhesively bonded tube, followed by the attachment of top and bottom heads.

II. APPLICABILITY

All fibre drums.

III. SIZE

Sizes for fibre drums shall be as prescribed by 49 C.F.R. 178.

IV. TOP AND BOTTOM HEAD ATTACHMENTS

Top and bottom heads shall be attached so as to withstand successfully the tests prescribed under this Subchapter for the specific application and type of drum. Top and bottom heads may be made from solid or laminated fibreboard or paperboard, metal, plastic or wood.

FIBRE DRUM TECHNICAL COUNCIL

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WASHINGTON, D.C. 20005-3502
(202) 371-5840

FACSIMILE (202) 371-5950

STANDARD 140

Revision No. 0

V. SIDEWALL TUBE

A. PAPER REQUIREMENTS

The sidewall tube is made by the convolute winding of paperboard of minimum 0.012" caliper, though heavier stock may be used. The sidewall and headings must meet burst test requirements as specified in Items 291, 294 and 296 of the National Motor Freight Classification, and Rule 51 of the Uniform Freight Classification.

B. ADHESIVE

The adhesive used to bond sidewall plies together may be sodium silicate or any other adhesive capable of providing strong interply bond. If the drum is intended for outdoor or high humidity storage, then non-water soluble setting adhesive shall be used in its construction. [See FDTC Standard 130.]

C. CONSTRUCTION FEATURES

In addition to the multiple plies of paperboard, other structural features may be used in the sidewall tube. A barrier ply containing polyethylene or aluminum foil may be placed at some location in the sidewall. A polyethylene (or other plastic) "skin" may be wound as the exterior ply with the plastic facing outwards, to provide moisture resistance, washability, identifiability and esthetic values to the drum. A lining, made by laminating polyethylene (or some other polymer or poly/foil combination) to the paperboard may be used as the interior ply to provide liquid-holding capability and/or improved product protection and drum cleanliness properties.

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VI. MISCELLANEOUS FEATURES

For improved liquid tightness and/or strength, a caulking material must be used to seal the juncture between sidewall and bottom heading. For improved product and/or environmental protection, a gasket must be used to seal the top juncture.

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STANDARD 150

Revision No. 0

IMPACT TEST

I. GENERAL

Impact strength of fibre drums intended for the packaging of liquids is determined generally in accordance with the tipover and drop test procedures described in NMFC (National Motor Freight Classification) Item 296, Section 2, and in the essentially identical UFC (Uniform Freight Classification) Rule 51, Section 6(b), for road and rail shipment, respectively.

II. APPLICABILITY

For fibre drums intended for the packaging of liquids.

III. TEST METHOD

A. CONDITIONING

Fibre drums must be conditioned at 50 ± 2% relative humidity and 73 ± 2°F (23 ± 1°C) for at least 48 hours prior to test.

B. TIPOVER TEST

Drums filled to net capacity with water must withstand a tipover fall on concrete on the cover chime.

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Revision No. 0

C. BOTTOM DIAGONAL DROP TEST

Following the tipover test the same drum must withstand a diagonal drop on the bottom chime sufficient to provide at least 500 foot-pounds impact, except that a maximum height of drop shall not exceed two feet and the minimum height of drop not less than one foot.

D. DROP TEST ORIENTATION AND RELEASE MECHANISM

For the bottom diagonal drop test the drum shall be suspended such that the center of gravity of the container and contents is vertically above the point of impact. Attainment of this orientation is facilitated by suspending the drum from a hoist by use of a chime grab, and by using a release mechanism similar to that pictured in ASTM D997, Figure X1.3, to initiate the drop.

IV. CRITERION FOR PASSING THE TEST

No leakage.

U.S. Department
of Transportation

Research and
Special Programs
Administration

400 Seventh Street, S.W.
Washington, D.C. 20590

JAN 12 1993

Mr. Gordon Rousseau
Technical Advisor
Fibre Drum Technical Council
1400 L Street, N.W.
Washington, DC 20005-3502

Dear Mr. Rousseau:

This is in response to your application (10836-N), on behalf of the Fibre Drum Technical Council, for an exemption from the Hazardous Materials Regulations. Your application was to authorize the continued use of fiber drums which do not meet the performance standards adopted under Docket HM-181 (49 CFR Part 178), for certain hazardous materials which are currently authorized to be shipped in non-specification packagings. These materials are, after October 1, 1996, required to be shipped in packagings which meet performance standards at the Packing Group II or III level.

This is to advise you that your request for exemption is denied. In accordance with 49 CFR 107.109(c), the reason for the denial is as follows:

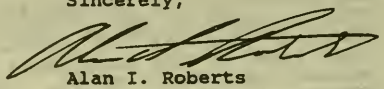
> The application did not demonstrate that the fiber drums proposed for use in the shipment of various hazardous materials will provide a level of safety at least equal to that established in the regulations adopted under Docket HM-181. Packagings used to transport liquid materials must be tested to show a capability to withstand internal pressures which may be produced by the liquid lading. The standards submitted with your application did not address the pressure requirements of the leakproofness and hydrostatic pressure tests required for packagings intended for liquid hazardous materials (49 CFR 178.604 and 178.605).
>
> The "impact" test proposed is not equivalent to the drop test required for Packing Group II or III packagings (49 CFR 178.603). Some of the materials you listed in your application would be required to be shipped in packagings tested to the Packing Group II level. The testing represented by the standards submitted with your application would not even equate to the less stringent Packing Group III level.

The Research and Special Programs Administration (RSPA) acknowledges that the performance standards adopted in Docket HM-181 represent, in many cases, an increase in packaging integrity as compared with the "old" specification-based system. These performance standards represent the virtual culmination of an effort which began in 1968. A major thrust of HM-181 was to enhance safety through better classification and packaging. RSPA was concerned about the adequacy of packaging for certain hazardous materials, including those which pose environmental hazards. Docket HM-181 put in place minimal performance requirements for packaging hazardous materials based on the risks they pose to health and the environment. For a Packing Group III performance level, a package must be able to survive a 2.6 foot (0.8 meters) drop without leakage, a lower height than if one 55-gallon fiber drum fell off another. It is not the intent of HM-181 to maintain the status quo, but rather to increase the level of safety with regard to the packaging of certain materials.

RSPA remains firm in the belief that the minimal performance standards imposed by HM-181 are necessary and justified based on safety and environmental concerns. In order to provide the industry with more time in which to develop new packagings which are capable of meeting the performance criteria, implementation was delayed until October 1, 1996, for domestic shipments in non-DOT specification packagings.

RSPA believes that packagings which meet the performance standards can economically be produced and, indeed, are being produced. Many of these packagings are reusable and recyclable. Therefore, U.S. hazardous materials shippers have alternatives for authorized packagings which meet the HM-181 performance criteria.

Sincerely,



Alan I. Roberts
Associate Administrator for
Hazardous Materials Safety

WINSTON & STRAWN

FREDERICK H. WINSTON (1883-1958)
SILAS H. STRAWN (1891-1948)

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March 15, 1993

HAND DELIVERED

MAR 15 1993

Rose A. McMurray
Acting Administrator
U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: Appeal of Denial of Application for Exemption (10836-M)

Dear Ms. McMurray:

Enclosed you will find the Fibre Drum Technical Council's ("Council") appeal of the Department of Transportation's Research and Special Programs Administration's ("RSPA") denial of the Council's exemption application filed with your office on June 8, 1992.

As you will recall, I received an extension of time in which to file this appeal until March 15, 1993 pursuant to your February 12, 1993 letter. My request for an extension of time was based upon RSPA's Freedom of Information Officer's acknowledgment that RSPA would be unable to respond to my Freedom of Information Act ("FOIA") request within a 30-day period. As pertinent here, I have not yet received a response to my FOIA request, and therefore, this appeal is predicated upon information that is currently available in the public docket files (except for one Agency record that you have provided which is Exhibit D to this appeal).

The Council appreciates your consideration of this appeal and looks forward to your decision.

Very truly yours,

Margaret A. Hill

Enclosures

cc: Frazer Hilder, Esquire
Fibre Drum Technical Council

MAR 15 93

BEFORE THE
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE FIBRE DRUM TECHNICAL COUNCIL'S EXEMPTION REQUEST (10836N)	)	Appeal No. ____

APPEAL OF DEPARTMENT OF TRANSPORTATION'S
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
DENIAL OF EXEMPTION REQUEST 10836N

I. BACKGROUND

This is an appeal of the decision of the Department of Transportation's Research and Special Programs Administration ("RSPA") to deny exemption request 10836N and is filed on behalf of the Fibre Drum Technical Council ("FDTC" or "Council"). On June 8 1992, the Council filed an exemption request with RSPA's Office of Hazardous Materials Exemptions and Approvals requesting RSPA to continue the authorization for the use of fibre drums for certain liquid cleaning compounds and other hazardous materials beyond the effective date of HM-181.[1] (See Exhibit A.) HM-181 effectively precludes the use of the fibre drums not conforming to the performance requirements of HM-181 for shipment of these hazardous materials after September 30, 1996. As required by 49 U.S.C. app § 1806(a), the FDTC submitted a safety analysis to justify the grant of an exemption, and more specifically, the Council submitted all information required by 49 C.F.R. § 107.103(b)(1)-(11).[2]

On January 12, 1993, the Associate Administrator for Hazardous Materials Safety (Alan I. Roberts), issued a letter to the Council denying the exemption request primarily based upon the stated reasoning that these fibre drums cannot meet the HM-181 performance standards (drop and pressurization tests) required for shipment of these materials. A more detailed explanation of the factors RSPA considered in its review of the exemption application, and the alleged reasons for denial, is provided in RSPA's "Exemption Evaluation Form" and "Issue Paper". (See Exhibit C.)

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[1] These hazardous materials include those formerly regulated pursuant to 49 C.F.R. §§ 173.249a, 173.118(b), 173.245b, and 173.232; hereinafter referred to as "these materials".

[2] The FDTC supplemented its exemption application with a filing on August 3, 1992. (See Exhibit B.)

As pertinent to this appeal, the FDTC filed the exemption equest since RSPA failed to respond to the FDTC's "Petition for econsideration" ("Petition") which was filed on April 2, 1991 in esponse to the HM-181 final rule.[3] (See Exhibit D.) In the DTC's Petition, the Council requested RSPA to reconsider the ffect that HM-181 would have on the fibre drum industry, and the xcellent safety record and shipping experience of fibre drums, and pecifically requested RSPA to continue authorization of non-pecification fibre drums for domestic shipments of certain azardous materials. In addition to filing the Petition, the FDTC et several times with RSPA staff in regard to: (1) the impact of M-181 on the fibre drum industry; and (2) the industry's extensive xperience and excellent safety record.

On December 20, 1991, the RSPA effectively denied the DTC's petition (see 56 Fed. Reg. 66145) by failing to respond to he Petition in the corrections to the HM-181 final rule. As a esult, the FDTC filed its exemption request, which was denied. ccordingly, the FDTC appeals the decision of the Associate dministrator for Hazardous Materials Safety to deny the exemption equest.

I. JURISDICTION

The Administrator of RSPA has the authority to consider his administrative appeal pursuant to 49 C.F.R. § 107.121.

II. ISSUES TO BE CONSIDERED BY THE ADMINISTRATOR OF RSPA

. RSPA Has Not Considered All Of The Relevant Factors In Reviewing The FDTC's Exemption Application, And Therefore, Has Abused Its Discretion

Section 107(a) of the Hazardous Materials Transportation ct ("HMTA"), as amended, 49 U.S.C. app. § 1806(a), authorizes DOT, hrough the auspices of RSPA, to issue an exemption provided the equestor meets one of two standards. First, if there is an xisting level of safety established, the Agency is authorized to ssue an exemption if the requestor demonstrates that the level of afety in the shipment of hazardous materials (in accordance with he exemption) is at least equivalent to that required by egulation. The second standard applies if there is no existing evel of safety established; in this context, RSPA is authorized to ssue the exemption provided it is consistent with the public

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[3] The FDTC also responded twice to the Notice of Proposed Rulemaking, on February 26, 1988 and May 25, 1988. The comments expressed various concerns in regard to the effect and impact that HM-181 would have on the domestic fibre drum industry and why RSPA should allow the continued use of fibre drums for certain commodities.

interest and policy of Title I of the Transportation Safety Act of 1974 (see 49 U.S.C. § 1801 et seq.).[1]

RSPA has apparently determined that the first standard is applicable in this case. However, it is important to note that there is no case law or RSPA guidance which explains how RSPA or the person requesting the exemption determines, in accordance with this standard, what the established existing level of safety is. The determination, then, is conducted on a case-by-case basis, and in the pending matter, RSPA incorrectly and arbitrarily determined that the new performance tests required by HM-181 for fibre drums constitute the "established existing level of safety" since the performance standards assess "a packaging's ability to survive the transportation environment." (See Exhibit C at "1H" and p.5.)

In RSPA's letter of denial, it stated that the exemption application failed to "demonstrate that the fibre drums proposed for use in the shipment of various hazardous materials [would] provide a level of safety at least equal to that established in the regulations adopted under Docket HM-181." (See Exhibit E.) As noted above, the existing level of safety to which RSPA refers is the new performance standards required by HM-181 for fibre drums. RSPA's conclusion clearly ignores relevant factors that were part of the exemption request and the administrative record; i.e., the shipping experience and safety record associated with pre-HM-181 authorized fibre drums. In reaching this conclusion, RSPA has placed undue reliance upon an irrelevant factor; i.e., the new HM-181 performance standards for which there is no history of shipping experience in this country. These new performance standards have not been tested or proven in the real-life transportation world -- there is an obvious lack of experience with these standards and they do not and cannot, in any regulatory context, represent an "established" existing level of safety. In contrast, fibre drums authorized prior to HM-181, as demonstrated in the exemption application, have been proven to be safe -- the success rate in the real-life transportation world is almost 100 percent (see p.5). In ignoring this successful safety record, RSPA is ignoring the only existing level of safety that has been firmly established by experience, and is instead, arbitrarily relying upon the new HM-181 performance standards.

Numerous companies have submitted comments to RSPA in the administrative record in regard to HM-181 documenting the excellent safety record and shipping experience that these companies have had with the transportation of materials (including many types of chemicals) in fibre drums. For example, these companies, including OTV Distributors, Inc., USC (division of Hydrate Chemical Co.), Golden West Distribution & Warehousing, WCS Corporation, Cameron-Yakima, Inc., J.F. Shelton Company, Econotek Inc., Jonco Chemical

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[1] Title I generally pertains to the regulation of hazardous materials that will be shipped in transportation.

Co., Inc., Chevron Chemical Company, Shell Oil Company, Ally Industries, Independent Packaging Inc., Sybron Chemicals Inc., Olin Corporation, the Virkler Company, Cooper Chemical Company, Borden Inc., Specialty Polymers, Inc., and General Chemical Corp. (many of which are Fortune 500 companies), stated in letters submitted to RSPA in 1991 that: "In light of extensive experience in the shipment of these nonflammable and corrosive products in openhead fibre drums, and their proven performance in service * * * we strongly request that DOT reconsider its decision to eliminate the benefits of these exceptions, and that it amend HM-181 to allow the continued domestic shipment of such corrosives and flammables in openhead fibre drums." Another company, Co-Plas, Inc., which uses approximately 15,000 fibre drums annually, also submitted comments to RSPA in 1991 and stated that the company has "never experienced any problems in shipping or handling of [chemicals]." As is apparent, fibre drums that were authorized prior to HM-181, pursuant to RSPA's exemption authority, have a proven track record and a history of safety in the shipment of hazardous materials authorized by the applicable exemptions. These fibre drums represent the established existing level of safety. RSPA's decision to conclude otherwise is completely without justification.

Even RSPA, by its own admissions, has acknowledged the safety record of fibre drums authorized prior to HM-181. For example, RSPA, in its Exemption Evaluation Form, identified the shipping experience associated with pre-HM-181 authorized fibre drums as "satisfactory." (See Exhibit C, Part V). Additionally, in the preamble to the final rule, RSPA explained that certain standards required by HM-181 would not become effective for a five-year period "to ease the burden of transition to the new packaging standards, in those instances where safety considerations do not warrant a shorter implementation period" (emphasis added). See 55 Fed. Reg. 52408 (Dec. 21, 1990). Since the new performance standards prescribed for fibre drums do not become effective until October 1, 1996, RSPA has, in effect, admitted that there are no safety-related reasons to support an early phase-out of pre-HM-181 fibre drums.[3/]

As pertinent here, RSPA's analysis in relying upon the new performance standards as the "established" existing level of safety is clearly flawed. For example, RSPA states in its Exemption Evaluation Form that the new performance standards are intended to simulate the transportation environment (see Exhibit C, p.6), an obvious admission that it is concerned about how packaging performs in the real-life transportation environment.

[3/] RSPA did provide a transitional phase-in period for other requirements warranted by safety considerations. For example, RSPA provided a two-year transition period for classification, hazard communication and packaging changes for materials that are poisonous by inhalation. 55 Fed. Reg. 52409 (Dec. 21, 1990).

Notwithstanding this concern, RSPA states, in a contradictory fashion, that "shipping experience alone does not demonstrate packaging reliability" (id.). Thus, RSPA has decided to rely upon unproven standards that allegedly "simulate" the transportation environment in determining what the established existing level of safety is, but has concurrently decided to exclude actual shipping experience (and a history of safe use) in the real-life transportation environment in making its determination. In short, RSPA has arbitrarily denied the exemption request in relying upon the new performance standards as the established existing level of safety and in ignoring relevant factors which are pertinent to its decision; (i.e., shipping experience and the safety record of pre-HM-181 authorized fibre drums). Accordingly, RSPA has abused its discretion in denying the exemption request submitted by the Council.

B. RSPA's Denial Of The Exemption Request Is Arbitrary And Capricious

1. RSPA Failed To Consider The Fibre Drum Industry's Excellent Safety Record And Extensive Shipping Experience -- Relevant Factors Which Support Issuance Of The Exemption

As noted, the Associate Administrator for Hazardous Materials Safety completely ignored the fibre drum industry's excellent safety record and extensive shipping experience; i.e., the established existing level of safety, as detailed by the FDTC in its exemption request. For example, at page 3 of the exemption request, the FDTC noted that company records and RSPA's own records (Hazardous Materials Incident Reporting System) demonstrate that from 1980 to 1991, over 13 million fibre drums were built for use in shipping the hazardous materials for which the exemption was requested. With respect to the 13 million drums (in which a variety of hazardous materials were shipped), only 1,487 incident reports indicating a failure of some type were filed with DOT during this 12-year period.[9] Thus, the success rate that can be

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[9] RSPA conveniently states at page 4 of its Issue Paper that the Agency's incident reporting system "is not complete and does not represent all of the incidents that occur." Yet, RSPA relies upon the data submitted to this system in reviewing other exemption applications and in determining whether an adequate safety record exists. In fact, RSPA relied upon the Hazardous Materials Incident Reporting System in justifying the new performance standards in HM-181. See RSPA's "Final Regulatory Evaluation, Docket HM-181, Performance-Oriented Packaging Standards", pp. ii-iii, 9, (Oct. 15, 1990). Clearly, the data and the system can not be so flawed and inaccurate that RSPA continues to maintain the system, and further, continues to rely upon the data in its administration of the hazardous materials regulations.

attributed to shipments of hazardous materials in fibre drums, including those materials requested for continued authorization in the exemption request, is almost 100 percent (specifically, 99.99 percent). As further noted in the exemption request, RSPA received 20,277 incident reports covering failed metal drums during the same time period; this failure rate must be considered in comparing the total production of fibre drums of 40 million units of all types to the steel industry's 90 million units. In short, the statistics demonstrate that the success rate for fibre drums is remarkably high, and further, the statistics attest to the fibre drum's exceptional reliability for the shipment of hazardous materials.

It is extremely important to consider the significance of these statistics (associated with the shipment of hazardous materials in fibre drums) in the context of DOT's regulatory history regarding some of the hazardous materials for which the exemption was requested, i.e., materials formerly regulated by 49 C.F.R. § 173.249a. Specifically, in the 1970's, DOT, in accordance with HM-57, amended the definition for corrosive materials subjecting many materials, previously unregulated, to regulation. In the definitional amendment, DOT recognized the acceptability of fibre drums as safe and adequate packaging for the materials that were to be regulated under new Section 173.249a -- some of the same materials described in the exemption request. In authorizing fibre drum packaging for these materials under the new final rule, HM-57, DOT noted that:

> * * * the available record does not support that § 173.249a would result in unsafe practices. It is important to note that the descriptions set forth in §173.249a will permit the Board to monitor the adequacy of the [non-DOT specification] packagings authorized in this section through its hazardous materials incident reporting system.

38 Fed. Reg. 35467 (Dec. 28, 1973). As is evident, not only did DOT make an affirmative decision to allow non-specification packaging, but DOT concurrently decided to monitor the adequacy and safety of non-specification packaging for materials regulated under Section 173.249a to determine if its decision should stand. This analysis is confirmed by the original Notice in the Federal Register for this rulemaking, in which DOT stated its objective as follows:

> A new § 173.249a is proposed to prescribe packaging for these materials. Meanwhile the Board has been inquiring into the strength of some of the packaging referenced to determine if upgrading of the package is warranted and feasible. Depending on the outcome of the Board's review and the records of experience that it gathers regarding the shipment of

materials in these packages, the Board may propose further rulemaking in this area.

38 Fed. Reg. 24915 (Sept. 11, 1973).

As is apparent, DOT put the regulatory community, including the fibre drum industry, on notice that it would be monitoring and evaluating the shipment of materials regulated by Section 173.249a in non-specification packaging from a safety perspective. Given the excellent safety record associated with the shipment of these materials in fibre drums, and the many years of shipping experience (i.e., an established level of safety), it is indeed unclear as to why RSPA has now decided to take the extraordinary step of eliminating the continued authorization of fibre drums for these materials by denying the exemption request. Had the fibre drum industry's record not demonstrated a success rate of 99.99 percent, RSPA's decision to deny the request would be understandable. However, it is clear from a review of the Associate Administrator's decision that RSPA completely ignored the excellent safety record and extensive shipping experience associated with use of fibre drums for these materials -- factors which demonstrated the existence of an established level of safety and which supported issuance of the exemption. Accordingly, RSPA's decision was arbitrary and capricious.

2. **RSPA's Policy In Granting Exceptions To HM-181 Has Been Inconsistently Applied, And Is Therefore, Arbitrary And Capricious**

In responding to numerous comments and Petitions for Reconsideration from the regulated community in connection with HM-181, RSPA decided to authorize certain existing exceptions to the new rule, and additionally, decided to authorize new exceptions based upon information provided to RSPA by interested parties. A brief review of these authorized exceptions demonstrates that RSPA's policy in granting exceptions to the HM-181 performance standards has been inconsistently applied; accordingly, RSPA's decision to deny the FDTC's exemption request is arbitrary and capricious.

In RSPA's promulgation of HM-181 as a final rule, for example, the Agency decided to classify anhydrous ammonia as a "non-flammable gas" for purposes of domestic shipments notwithstanding the fact that anhydrous ammonia is classified as a "poison gas" under HM-181 for international shipments. RSPA's reason for doing so was based upon comments received in response to HM-181. As stated by RSPA in the final rule, numerous comments were received claiming "that reclassification of anhydrous ammonia to a poison gas will substantially increase transportation and insurance costs. Commenters also pointed out that transportation and uses of anhydrous ammonia products are essentially safe." 55 Fed. Reg. 52434 (Dec. 21, 1990). RSPA concurrently acknowledged in the Federal Register that a poison classification "would be the

est way to communicate the hazards of anhydrous ammonia", (id.), ut nevertheless decided to make a domestic exception to HM-181 lassifying the commodity as a Division 2.2 non-flammable, non- oisonous compressed gas for domestic shipments. Significantly, nhydrous ammonia is classified as a Division 2.3 poison gas for nternational shipments.

Similarly, RSPA decided to maintain a domestic exception or combustible liquids allowing domestic shippers to deviate from he UN definition of flammable liquids; i.e., domestic shippers ave the option of reclassifying the materials as combustible in he 100°F to 141°F flash point range. The UN definition for lammable liquids includes liquid materials with a flash point at r above 100°F to 141°F. In granting this domestic exception, RSPA pecifically noted that it is "aware of the concerns of commenters ho stated that the domestic exception violates an intent of Docket M-181 to achieve regulatory harmony", 55 Fed. Reg. 52435 (Dec. 21, 990), but nevertheless, decided to authorize the domestic xception since it would be "consistent with the way these aterials have been regulated, transported, and stored for years * *", and that the exception would minimize economic impacts. d.

While the examples cited above pertain to RSPA exceptions or commodities and classification, as distinguished from ackaging, the ultimate impact and effect of RSPA's decision to uthorize a domestic exception is the same; i.e., a deviation from ne performance standards set forth in HM-181. Importantly, RSPA ranted these exceptions based upon considerations such as: the mpact of HM-181 upon the domestic markets, costs to industry equesting the exception, and data provided by commenters as to xisting domestic transportation practices and the relative safety f such practices. As relevant here, there is, in practice, no ubstantive difference between a "commodity" exception and a packaging" exception since both kinds of exceptions result in the ipment of a regulated commodity in non-specification packaging.

RSPA also authorized various domestic exceptions in its orrections document to final rule HM-181 in December 1991. Again, / way of example, RSPA agreed to allow salvage drums to be tested : the Packing Group III performance level (with liquid or solids) n lieu of the Packing Group II level based upon "the manner in hich salvage drums are actually used." 56 Fed. Reg. 66137 (Dec.), 1991). Likewise, RSPA decided to continue the existing current xemption excepting mercury shipped in manufactured articles from egulation under certain conditions. In allowing this exemption, SPA accepted the Petitioner's claim that there has not been any Loss of contents during transportation in connection with this xemption" (id.), i.e., the exemption was continued based upon ndustry's shipping experience. Shipping experience was also elied upon when RSPA decided to liberalize packaging authorization or pyrophoric materials. Id. And, long-standing shipping ractices were also relied upon by RSPA in continuing the exemption

for methyl bromide and chloropicrin mixtures to be shipped in small packages. Id.

Another important exception that should be considered in the context of this appeal was RSPA's decision to allow the continued use of the T-zone test by drum manufacturers to determine "leakproofness" despite RSPA's stated acknowledgement that "[steel] drum manufacturers *** have not adequately shown [the] test to be an 'equally effective' leakproofness testing method". 56 Fed. Reg. 66154-66155 (Dec. 20, 1991). RSPA further noted that "the companies that conducted the equivalency tests did not evaluate the effectiveness of the T-zone test by using drums that were known to leak," and therefore, the "procedure may have yielded less favorable results." Despite RSPA's acknowledgement that the data may have been faulty, RSPA decided to allow the exception based upon the data and because of "the time it takes to conduct the full submersion leakproofness test in high-volume production lines ***" (i.e., costs). Id. Not only is RSPA's reasoning for this particular exception questionable, but it further demonstrates that production costs are a typical factor considered by RSPA in determining whether to make a domestic exception to the performance standards.

Also relevant to this discussion is the fact that RSPA contacted various foreign officials to determine whether other countries allow use of the T-zone test in an effort to determine whether it should permit the exception to the HM-181 performance standards. Two letters were received by RSPA in response to this inquiry that were available in the Public Docket for HM-181; a review demonstrates that the United Kingdom and Japan regard the test as unacceptable. Nevertheless, RSPA decided to allow the exception based upon the factors discussed above, and also based upon RSPA's hazardous materials incident reporting data for this industry (i.e., shipping experience). Id.

In its denial of FDTC's exemption request, RSPA noted its intent to enhance safety through better classification and packaging and stated its desire to increase the level of safety with regard to the packaging of certain materials. Indeed, these are laudable goals; however, these goals appear to be conveniently ignored depending upon which exception or exemption is under RSPA's consideration. In short, RSPA's policy in authorizing exceptions to the HM-181 performance standards has been applied inconsistently in the FDTC's case. As noted in the examples described herein, RSPA has relied primarily upon shipping experience and safety-related data from other companies and industries in granting exceptions to HM-181 (in addition to production costs), but has completely ignored the safety-related data and shipping experience (in addition to cost-related data) presented in the Council's exemption application. In sum, RSPA's decision in denying the FDTC's exemption request was clearly arbitrary and capricious since RSPA did not consider this exception using the same policy and

factors that were applied in its consideration of other exceptions and/or exemptions to HM-181.

C. **Safety And Environmental Concerns Support Approval Of The FDTC's Exemption Request**

As discussed in Part A herein, the statistics maintained by individual fibre drum companies and RSPA's own incident reporting system demonstrate that the fibre drum industry has an excellent safety record in regard to the shipment of these hazardous materials. The data presented to RSPA in the FDTC's exemption application are at least as compelling in this regard as the data RSPA considered in authorizing other exceptions and exemptions, as discussed above in Part A.

In addition to the excellent safety record and shipping experience of the fibre drum industry, another compelling reason that RSPA failed to consider in determining whether to grant the exemption is the fact that fibre drums are more environmentally-friendly than steel drums. In brief, fibre drums have become the preferred option for many customers who formerly used metal and plastic drums. As RSPA knows, paper from fibre drums is recycled; in fact, at least one major manufacturer of fibre drums in the United States has developed a complete recycling system (with four mobile and two stationary units in place and more planned) in which empty drums are collected and metal components are separated from fibre. Fibre elements are then shredded for use in manufacturing industrial grade fiberboard. (At least two additional fibre drum manufacturers are also developing similar recycling capacity.) On the other hand, steel drums are reconditioned in a more limited manner, and have been disposed of at sites that have been or eventually will be placed on EPA's National Priorities List for Superfund remediation.[7] Moreover, the reconditioning of steel drums also leads to the generation of hazardous wastes which must be stored, treated, and ultimately discarded.

Importantly, EPA's primary goal in the management of hazardous wastes is to eliminate their generation by promoting all recycling efforts since recycling more effectively reduces risks to humans and the environment, conserves energy, and slows the depletion of nonrenewable natural resources. Additionally, while some steel drums are recycled to steel-making facilities, many are land-disposed when they are discarded whereas fibre drums may be

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[7] As RSPA knows, when steel drums are reconditioned, hazardous wastes are usually generated. This is an important environmental consideration given the fact that drums may be reconditioned as many as seven times, thereby generating a significant quantity of hazardous waste. See DOT report entitled "Regulatory Evaluation of Performance-Oriented Packaging Standards for Fiberboard Boxes and Metal Drums," Report No. SS-42-U7-27, Attachment 2 (August 1985).

safely incinerated thereby reducing the amount of landfill space, which is growing scarce. See generally, 56 Fed. Reg. 50980 (1991).

In sum, reasons directly related to protection of the environment support the FDTC's exemption request. And, the excellent and outstanding safety record associated with shipment of hazardous materials in fibre drums demonstrates that there has not been, and will not be, adverse impacts to the environment resulting from the use of fibre drums. While HM-181 may be necessary and justified based on safety and environmental concerns, as RSPA contends in its denial of the exemption request, allowance of the exemption is likewise necessary and justified based on safety and environmental concerns.

D. RSPA's Decision To Strictly Interpret The UN Standards, As Set Forth In HM-181, Is Not Required By Law

In RSPA's 1990 final rule and the 1991 corrections to HM-181, RSPA noted that one of its reasons for adopting HM-181 was to ensure that domestic transportation standards would not be a barrier to trade, and that this policy was consistent with the Hazardous Materials Transportation Uniform Safety Act of 1990 and the Trade Agreements Act of 1979. Briefly, 49 U.S.C. app. § 1804(d) (Section 105(e) of the 1990 amendments) established criteria for international uniformity of federal hazardous materials regulation and directs the Secretary of DOT to recommend standards and requirements for the transport of hazardous materials in international commerce. Importantly, Section 1804(d) does not require the Secretary to issue standards identical to those adopted by an international body if the Secretary determines that the standards are unnecessary or unsafe. Likewise, the Trade Agreements Act of 1979, 19 U.S.C. § 2532, requires federal agencies, if appropriate, to develop federal standards based upon international standards; however, the Act also authorizes federal agencies to consider legitimate domestic objectives when necessary in adopting federal standards, 19 U.S.C. § 2531.

While RSPA has an obligation to consider international standards in adopting federal hazardous materials regulations, and did so in HM-181, existing law authorizes RSPA to consider domestic objectives and concerns as well -- such as the impact that HM-181 will have on the fibre drum industry. Moreover, Section 1804(d) does not require RSPA to adopt international standards if the standards are unnecessary -- this is apparently the legal authority that RSPA relied upon in authorizing the various exceptions to HM-181 discussed herein. In fact, RSPA already acknowledged in its 1990 rule that exemptions would not be phased out but would be authorized when appropriate. 55 Fed. Reg. 52409 (Dec. 21, 1990).

In this regard, it is important to emphasize the fact that the UN Recommendations, after which HM-181 is modeled, are not completely uniform nor do they impose an absolute mandate. Specifically, Paragraph 9.1.8 of Chapter 9 was adopted by the UN in

response to participating countries' concerns that certain types of packaging would be eliminated since they did not meet the Chapter 9 performance tests (e.g., tinplate and light-metal receptacles). In response to these concerns, the UN adopted Paragraph 9.1.8 (stated below) to recognize that different regions and countries may wish to adopt exceptions to the UN Recommendations for substances or packages based upon individual modes of transportation.

> It is recognized that certain substances are transported in packagings which do not meet all the performance tests in this Chapter. It may be appropriate for provisions to be made for such substances and/or packagings in relation to individual modes of transport.

The United States specifically supported and encouraged adoption of Paragraph 9.1.8. to recognize regional trends and practices associated with transportation of hazardous materials. RSPA apparently did not consider this provision in the UN Recommendations in promulgating HM-181 or in evaluating the exemption application submitted by the FDTC.

The issue as to whether international uniformity is required for standards relating to hazardous materials transportation is important since it appears to be part of RSPA's stated reasoning for denying the domestic exception that the FDTC is seeking for the transport of certain hazardous materials in fibre drums. For example, in the 1991 corrections document to the final rule, RSPA noted "that single fibre drums have not been viewed internationally as suitable for transporting liquid hazardous materials because of the high-water absorption properties of fibre packaging materials". 56 Fed. Reg. 66145 (Dec. 20, 1991). RSPA's reasoning in this regard disregards a very critical fact; i.e., the domestic fibre drum industry uses a technology that has been uniquely developed in the United States and which has been successfully used in this country for the past 30 years by the chemical industry. This domestic technology has not been used by other countries only because they decided not to pay the costs associated with acquiring this American technology. As pertinent here, American manufacturing capabilities and raw materials are costly to duplicate elsewhere, and therefore, there has been no interest in licensing this advanced technology by other countries because of economics. RSPA should not equate this decision -- the Europeans' decision not to use the technology because of cost-related factors -- with a determination that American fibre drums are unsuitable for transporting these materials.

In sum, RSPA has the legal authority to authorize a domestic exemption for the fibre drum industry that would allow fibre drums to be used for the shipments of hazardous materials identified in the exemption application. There are no legal limitations imposed upon RSPA (either in the Hazardous Materials

Transportation Uniform Safety Act of 1990 or the Trade Agreements Act of 1979) that preclude RSPA's granting the exemption for fibre drums. It is important to note that international standards were not used by RSPA to preclude it from authorizing the use of the T-Zone test by the steel drum industry (even though other countries documented their initial views that the test is unacceptable because of safety concerns). Accordingly, international standards should not be used by RSPA in this instance to substantiate a decision to deny the fibre drum industry's exemption -- especially when the exemption request is limited to domestic shipments only and the technology has a proven track record.

E. RSPA's Administrative Record Upon Which It Based The Decision To Deny The Exemption Request Is Incomplete And Flawed

In reviewing the exemption application submitted by the Council, RSPA completed an "Exemption Evaluation Form" and prepared an Issue Paper (pre-decisional). In these documents, RSPA identifies the specific documents that purportedly constitute the Administrative Record for the exemption application officially known as Docket No. 10836-N. However, a review of the comments and analysis set forth in the Exemption Evaluation Form and the corresponding Issue Paper demonstrates that RSPA's Administrative Record was incomplete since it did not include all comments submitted during the course of the public comment period nor did it include information referred to by RSPA in the Exemption Evaluation Form and the Issue Paper. Because the Administrative Record is incomplete, a question remains as to whether any additional information is missing from the Docket and whether RSPA's evaluation of the exemption request considered all relevant factors or if RSPA was significantly influenced by any irrelevant factor.

For example, RSPA states that it received "dozens of letters" from members of Congress after it excluded authorization for non-specification fibre drums in HM-181. (See Exhibit C at p.1.) Yet, the "Docket comments" as defined by RSPA, does not include or refer to the comments or statements which were provided in these letters. (See Exhibit C, Part VI). RSPA states further at page 5 of the Issue Paper that it considered the costs associated with the new performance standards during the HM-181 rulemaking process and concluded that the costs were outweighed by the expected benefits. Importantly, the Public Docket for HM-181 does not contain a detailed economic or cost analysis as this statement suggests. DOT concluded in the final rule that a "Regulatory Impact Analysis" pursuant to Executive Order 12291, was not required since the rule was not a "major rule." See 55 Fed. Reg. 52464 (Dec. 21, 1990). As RSPA knows, a Regulatory Impact Analysis would have considered detailed economic factors and economic impacts (among other factors) associated with issuance of

a proposed and/or final rule.[8] The only cost information included by RSPA in the final rule was a limited 1985 study that focused upon the impact that HM-181 would have on "small entities"; (i.e., a limited study which does not address the full economic impact of HM-181), and a "Final Regulatory Evaluation" which focused primarily on qualitative factors.[9]

Additionally, a letter from Trilla Steel Drum, dated August 31, 1992, is not identified as being part of the Administrative Record. And, although RSPA considered petitions of employees of Sonoco Products Company filed on October 12, 1992 as part of the Administrative Record after the comment period closed, RSPA did not consider additional comments submitted by the Council only four days later on October 16, 1992.[10] Indeed, it is arbitrary to exclude from the Administrative Record comments submitted by the Council when RSPA previously considered comments submitted subsequent to the public comment period. In sum, RSPA's Administrative Record is incomplete, and therefore, a question arises as to whether the Agency considered all relevant factors.

IV. CONCLUSION

For the reasons set forth above, the FDTC respectfully appeals the decision of the Associate Administrator of Hazardous Materials Safety to deny the FDTC's exemption request, and further requests that the Administrator of RSPA issue an order granting the FDTC's exemption request as fully set forth in its exemption application.

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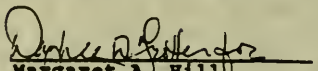
[8] As pertinent here, the Department of the Army disagreed in the administrative record with RSPA's conclusion that HM-181 is not "a major rule" to the Agency, noting that HM-181 would likely have an annual effect on the economy of $100 million or more. (Letter from W. Lee Mill, Colonel, U.S. Army to Dockets Branch at RSPA, dated February 26, 1988.)

[9] See generally, "Final Regulatory Evaluation, Docket HM-181, Performance-Oriented Packaging Standards" (October 15, 1990).

[10] The public comment period closed on September 4, 1992, pursuant to an extension request that was submitted to RSPA by NABADA (an organization whose members are competitors of the FDTC).

Respectfully submitted,



Margaret A. Hill
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Counsel to the Fibre Drum
Technical Council

Dated: March 15, 1993

U.S. Department of Transportation
Research and Special Programs Administration

The Administrator

400 Seventh Street, S.W.
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Margaret A. Hill, Esq.
Winston & Strawn
1400 L Street, N.W.
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RE: Appeal of Denial of Application for Exemption (10836-N)

Dear Ms. Hill:

In his January 12, 1993 letter, the Associate Administrator for Hazardous Materials Safety of the Research and Special Programs Administration (RSPA) denied the application by the Fibre Drum Technical Council (FDTC) for an exemption from certain requirements of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. On March 15, 1993, you appealed the Associate Administrator's denial, on behalf of FDTC, pursuant to 49 C.F.R. § 107.121 and my February 12, 1993 letter extending the time for filing that appeal.

Your appeal points out that the list of comments submitted on FDTC's exemption application, as set forth in Part VI of RSPA's Exemption Evaluation Form and p. 2 of RSPA's December 4, 1992 pre-decisional Issue Paper, does not include an October 16, 1992 letter in which FDTC purports to respond to other comments in the docket. As you acknowledge, FDTC's comments were submitted after the close of the comment period. However, it is RSPA's policy to consider late-filed comments to the extent that is practicable. Cf. 49 C.F.R. § 106.23. I am not aware of any reason why it would not have been practicable for RSPA to have considered FDTC's October 16, 1992 comments before the Associate Administrator made his decision.

Accordingly, I am vacating the Associate Administrator's January 12, 1993 decision denying FDTC's exemption application and remanding this matter to the Associate Administrator for a new decision on FDTC's application. In making that new decision, the Associate Administrator shall consider FDTC's October 16, 1992 comments and any other comments submitted on FDTC's exemption application to date.

I have recently received two letters directed to FDTC's appeal, from Myers Container Corp. and The Association of Container Reconditioners, both dated May 4, 1993. Inasmuch as I am remanding FDTC's exemption application to the Associate Administrator for a new decision, I am directing that these two letters be placed in the public docket for consideration by the Associate Administrator, to the extent he finds them relevant and material. Copies of these two letters are attached, and FDTC is allowed 20 days from receipt hereof to respond to them.

Otherwise, this remand does not reopen the record on FDTC's application, and there is no right to submit further comments. In making his new decision on FDTC's exemption application, the Associate Administrator retains the discretion to rely on any information which he finds relevant and helpful in determining whether an exemption should be issued under the authority of 49 App. U.S.C. § 1806(a) -- including comments submitted in rulemaking or other exemption proceedings. However, even if explicitly considered by RSPA, comments or other information already contained in the docket of another proceeding (including HM-181) are not deemed to be part of -- and need not be physically placed in -- the docket for FDTC's exemption application.

In accordance with 49 C.F.R. § 107.121, there will be a right to appeal the new decision of the Associate Administrator on FDTC's exemption application.

Sincerely,

Rose A. McMurray

Rose A. McMurray
Acting Administrator

Enclosures

WINSTON & STRAWN

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June 14, 1993

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rose A. McMurray
Acting Administrator
Research and Special Programs Administration
U.S. Department of Transportation
400 7th Street, S.W.
Washington, DC 20590

Re: June 1, 1993 Letter Pertaining to Exemption Request No. 10836-N

Dear Ms. McMurray:

I received your June 1, 1993 letter regarding the Fibre Drum Technical Council's ("FDTC" or "Council") exemption request (10836-N) in which you set forth your reasons for deciding to vacate and remand the Associate Administrator's decision on the FDTC's exemption application. You specifically state that your decision to vacate and remand is based upon the Research and Special Program Administration's ("RSPA") failure to consider an October 16, 1992 letter in which the Council responded to comments in the public docket on the exemption application. As you state, these comments were submitted after the close of the comment period; however, since RSPA considered other comments filed after the public docket as noted in the FDTC's appeal, it is only just that you decided to vacate and remand the decision. In short, RSPA should have considered the October 16, 1992 letter in its initial review of the exemption request.

You further state that RSPA will consider "any other comments submitted on FDTC's exemption application to date." Accordingly, RSPA should be sure to consider comments filed by Sinkler & Boyd, P.A. on behalf of Sonoco Fibre Drum, Inc. A copy of the November 20, 1992 comments are attached.

During your June 8, 1993 testimony before the Committee on Public Works and Transportation's Subcommittee on Surface Transportation, you further stated that your decision to vacate and

remand the Associate Administrator's decision was based upon the fact that the October 16, 1992 letter contains "new information" which was not previously considered by RSPA. In this regard, the FDTC looks forward to receiving your decision regarding the exemption request, and should the Associate Administrator again deny the request, we look forward to receiving your reason for the denial as it is related to the "new information".

The FDTC also finds it interesting that your decision to vacate and remand comes at a time when you have received two letters directed to the FDTC's appeal (the letters from Myers Container Corp. and The Association of Container Reconditioners). As pertinent here, you have decided to place these comments in the public docket for the exemption application notwithstanding the fact that: (1) the comments were directed to the appeal; and (2) the fact that RSPA's regulations do not provide the public with the opportunity to comment upon an administrative appeal of a decision regarding an exemption application. The exclusion of any such procedure for filing public comments on an appeal of an exemption decision is particularly obvious given the specific inclusion of a public comment process on the exemption application. See 49 C.F.R. § 107.109. Accordingly, while the Associate Administrator may decide to consider these comments as "relevant and material", I believe that you have exceeded your statutory authority in considering these comments since they are outside the scope of the regulations regarding appeals and since you have opened the public comment period to include these two letters without notice to other interested parties.

Please also note that while RSPA may decide to consider other information not contained in the docket for the exemption application in reaching your decision, that should the FDTC ultimately appeal this decision, the administrative record will consist of "all documents and materials directly or indirectly considered by agency decision-makers and includes evidence contrary to [RSPA's] position." Thompson v. United States Department of Labor, 885 F.2d 551, 555 (9th Cir. 1989), quoting Exxon Corp. v. Department of Energy, 91 F.R.D. 26, 32 (N.D. Tex. 1981) (emphasis added). And, of course, any such information is subject to the discovery rules as set forth in the Federal Rules of Civil Procedure.

The FDTC believes it is also necessary to respond to comments offered by the Associate Administrator at the June 8, 1993 hearing noted above pertaining to the steel drum industry. Specifically, Mr. Roberts stated that the steel drum industry is meeting all of the performance standards set forth in HM-181.

However, Mr. Roberts failed to advise the Subcommittee that he had already provided an exception to the UN performance standards in a December 20, 1991 rulemaking in allowing the steel drum industry to continue the use of the T-Zone test to determine "leakproofness". As pertinent here, in the December 21, 1990 final rule, 55 Fed. Reg 52462, RSPA stated that it "has not received sufficient information to indicate that any [non-UN] methods of leakproofness testing, such as the [T-Zone test] are at least as effective as the [UN] 'full submersion' test". Notwithstanding RSPA's valid concern, the Agency decided to allow continued use of this domestic performance standard even though RSPA stated publicly that the steel drum manufacturers "have not adequately shown this test to be an 'equally effective' leakproofness testing method." See 56 Fed. Reg. 66154-55 (December 20, 1991). Thus, RSPA continued to authorize a domestic performance standard without a demonstration that the test was equivalent to the UN standards.

Finally, as stated in your letter, the FDTC has 20 days from receipt of your letter to respond to the Myers and the ACR letters. The FDTC received your letter on June 4, 1993, and our response will be submitted to you on or before June 24, 1993.

Sincerely,

Margaret A. Hill

cc: The Honorable Nick Rahall, II
The Honorable Bill Baker
The Honorable James E. Clyburn
The Honorable John M. Spratt, Jr.
The Honorable Tim Valentine

Mr. RAHALL. Before we conclude, I recognize the gentleman from South Carolina, Mr. Clyburn.

Mr. CLYBURN. Just a quick question, Mr. Kelley. Why would it be difficult, or would it be difficult for the industry to redesign this drum to meet the national standards, would it be difficult to do that? Why can't you do it?

Mr. KELLEY. We have—we would certainly like to meet the standard even though we are not certain that it is relevant. We put a great deal of effort and people, I might add, as well as additional resources, into meeting all standards, not just packaging requirements but OSHA regulations, EPA and so forth.

So certainly it is our desire to do that, and we have made very diligent efforts, I think, over the years to do that. We have invested quite a bit of a substantial annual R&D budget toward improving these liquid containers to the point that they will.

Mr. CLYBURN. So you don't think you have improved safety at all?

Mr. KELLEY. Yes, that is my point. I think the record is 99.9 percent proven in existence. Even if we could do that, we would only be gaining that extra micro-fraction of a degree. And my knowledge of statistics is pretty limited but says that is an awfully good record that we stand on already.

Mr. CLYBURN. Thank you.

Mr. RAHALL. Thank you again, gentlemen, for your testimony.

That concludes today's hearings. The subcommittee stands adjourned until next Tuesday morning, June 15, at 10 a.m., at which time we will hear testimonies regarding the freight intercharge issue.

[Whereupon, at 1:55 p.m., the subcommittee adjourned, to reconvene at 10:00 a.m., Tuesday, June 15, 1993.]

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Statement of the
Chemical Waste Transportation Institute
on the
Reauthorization of the Hazardous Materials Transportation Act

by Stephen C. Hansen, Chairman

before the
House Public Works and Transportation Committee
Subcommittee on Surface Transportation
June 8, 1993

1730 Rhode Island Ave., NW Suite 1000 Washington, DC 20036 (202) 659-4613
Printed on recycled paper

Mr. Chairman, members of the Subcommittee, my name is Stephen C. Hansen and I am chairman of the Chemical Waste Transportation Institute (CWTI). The CWTI is an Institute of the National Solid Wastes Management Association, a trade association representing 2500 private waste services firms. The Institute serves as a forum for issues specific to the transport of hazardous waste. CWTI members are both private and for hire carriers that operate throughout the United States and Canada in foreign, interstate and intrastate commerce. Our organization is unique in that it represents only commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. We welcome the opportunity to come before this panel and share our views about the reauthorization of the Hazardous Materials Transportation Act (HMTA).

Hazardous wastes are a subset of hazardous materials in transportation. Hazardous waste transportation services are vital to 1) large generators who are unable or unwilling to manage their wastes at the point of generation; 2) businesses in every community, such as dry cleaners, auto body maintenance, photography development centers, and other generators of hazardous waste that have no option but to manage their wastes at commercial facilities; and 3) the transport of materials removed during remedial cleanup of hazardous waste sites.

The Institute participated in the debate which resulted in the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The policies espoused and the reforms mandated in HMTUSA were long over due. Benefits from this Act have already begun to be realized. The Institute takes this opportunity to publicly commend the Members and staff of this Subcommittee for seeing the legislation through to enactment.

While the overall framework of the Act is sound, we believe that some mid-course refinements are not only desirable but warranted.

I. Defining Federal/State Relationships: Preserving and Streamlining Preemption (P.L. 101-615, Section 13)

The HMTUSA authorized a framework for the federal preemption of certain non-federal hazardous materials transportation requirements. This framework has been set in place and is beginning to bear fruit. Nevertheless there are three concerns the Institute would like to lay before the Subcommittee.

I.A. First, the HMTUSA properly circumscribed federal preemptive power to the extent that non-federal requirements are "otherwise authorized by Federal law." This limitation has been interpreted by the courts to mean specifically authorized as opposed to the

mere absence of a federal prohibition against some non-federal requirement.

The CWTI understands the necessity for the "otherwise authorized" language and supported its inclusion. Institute members routinely comply with regulations emanating from other federal statutes, notwithstanding that transporters of other hazardous materials are not subject to such requirements. The uniform manifest, incident reporting, and financial responsibility requirements are examples of these more stringent regulations. Nevertheless, the Institute has consistently opposed conflicting and duplicative non-federal requirements that have no appreciable safety benefit, have frustrated the transportation of hazardous waste, and have, because of the requirements' complexity and cost, limited competition.

Primarily at the state level, transporters of hazardous waste have been the subject of numerous requirements that differ from federal standards such as operating permits, vehicle and container inspection and marking, training, shipping paper, emergency reporting, and fee assessments to name a few. States have instituted these complex and inconsistent regulatory schemes in the belief that the Resource Conservation and Recovery Act (RCRA) granted such authority. However, the US Environmental Protection Agency (EPA) affirmed last July that such requirements were not authorized by RCRA and that "state hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose ... In (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation."

Both HMTA and RCRA, as EPA's interpretation makes clear, intend federal preemption to achieve regulatory uniformity in the transportation of hazardous materials, including waste. Congress has recognized that uniformity fosters compliance, enhances enforcement and ultimately increases the safe, secure transportation of these materials. Others, particularly state agencies who attempt to impose unilateral requirements, take a different view of federal preemption. Some of these agencies have declared their interest in seeking legislation to overturn the preemptive authority of the HMTA at least as it pertains to the transportation of hazardous waste. We strongly urge the Subcommittee to resist such efforts to jeopardize the benefits of national uniformity.

I.B. Second, since enactment, 12 applications for determinations of preemption have been filed. Roughly 2 applications for determinations of preemption were filed in the first year after enactment of HMTUSA; 4 were filed during the second year; and in the last six months of the third year 6 have been filed. Not only has there been an exponential increase in the number of

filings over the years, but ominously only three determinations have been issued to date.

Congress instituted the preemption determination process as an alternative means of achieving national uniformity without recourse to costly, and sometimes lengthy, litigation. To ameliorate the possible conflicts that may arise between simultaneous consideration of an issue pursuant to the preemption determination process and by the courts, the statute bars applicants of preemption determinations from seeking redress in court until DOT has issued such determinations unless no determination has been forthcoming within 180 days of filing. Unfortunately, the preemption determination process has not operated in a timely fashion, thereby increasing costs to applicants that must continue to comply with challenged non-federal requirements pending the issuance of determinations and increasing the likelihood of litigation.

Discounting the six applications filed during this last six month period, if the remaining applications were concluded tomorrow, the average time between filing and determination would be over 15 months. According to the statute, every one of these applicants would be free to seek relief in court.

The courts have shown deference to DOT's interpretations of its preemptive authority. While we applaud such deference, believing such deference will enhance regulatory uniformity, we also recognize that courts may consequently be reluctant to take on cases pending the exhaustion of DOT administrative review. Thus, the option to seek a judicial resolution when DOT has not acted in a timely fashion may not in fact be an option.

We urge this Subcommittee to inquire of DOT the nature and extent of the impediments that preclude it from issuing timely determinations concerning federal preemption. We hope Congress will take whatever steps are necessary to remove those impediments to the preemption determination process, including providing DOT with additional resources if that seems an appropriate solution.

I.C. Third, Congress declared that certain subject matters were so critical to assuring the safe transportation of hazardous materials that non-federal requirements in these areas would be preempted unless they were "substantively the same as" corresponding federal requirements. These covered subjects include such things as classification of hazardous materials; packing, handling, labeling, marking and placarding of hazardous materials; preparation, execution, and the use of shipping documents; written notification, recording and reporting of unintentional releases of hazardous materials; and the design and testing of containers certified as qualified for use in the transportation of hazardous materials. "Substantively the same

as" has been defined by DOT to mean "conforms in every significant respect to the federal requirements. Editorial and other similar de minimis changes are permitted."

Clearly, Congress intended the federal government to occupy the field in these areas of regulation. The likelihood that non-federal requirements which diverge from federal standards would survive scrutiny under the preemption determination process, unless otherwise authorized by federal law, is remote. However, the burden to ensure that non-federal entities electing to regulate in these protected areas do not stray beyond the editorial and de minimis exceptions falls to the affected industry. If industry elects to challenge non-federal requirements in these covered subject areas through the preemption determination process, industry must bear the administrative burden of complying with the challenged requirements pending a decision and possible appeal. Moreover, industry must bear these costs each and every time a non-federal requirement in these areas is imposed until it is challenged and a preemption determination rendered. For example, the Institute has successfully petitioned against certain shipping paper requirements imposed by the State of Illinois. Several other states impose similar conflicting shipping paper requirements. Despite the Illinois decision, however, all of these other state shipping paper requirements continue in force pending challenge.

The CWTI recommends that the burden of proof as to whether non-federal requirements are "substantively the same as" federal requirements should fall to the non-federal governments that wish to impose such requirements. In report language accompanying HMTUSA, this Committee stated that the federal government would regulate exclusively the "substantively the same as" areas of hazardous materials transportation and that "state entry into these areas could occur only where the Federal government does not address a specific aspect of the covered areas and the federal government permits it." Thus, non-federal entities should be required to submit to DOT proposed requirements which fall into the "substantively the same as" jurisdictional areas for an affirmation that they will not subsequently be preempted prior to implementation. Exceptions should be provided for requirements which are intended to address imminent hazards. Not only would the intent of Congress be more purposefully implemented, but all affected parties would benefit from such a scheme. Industry, and its customers, would be spared the costs of complying with inappropriate regulations. Non-federal entities would be spared the unnecessary costs of starting programs only to dismantle them. If non-federal entities realized that covered subject requirements could not be enforced pending approval by DOT, such entities would be less inclined to regulate in these areas. Thus, DOT would likely conserve resources otherwise spent to respond to petitions for preemption of these requirements after the fact.

II. Revisions/Clarifications to P.L. 101-615, Section 22

Section 22 of HMTUSA provides for the establishment of uniform and reciprocal forms and procedures for states which choose to register or permit motor carriers of hazardous materials and/or persons who ship such materials by motor carrier. Registration means the process by which states may assess fees from the regulated community to pay for expenses related to the planning, training for emergency response or enforcement of hazardous materials regulations as well as administrative expenses related to the registration program. Permitting confers on a motor carrier authority or permission to transport hazardous materials.

A Working Group of persons representing state and local governments was charged to develop the forms and procedures. The CWTI served as the non-voting industry liaison to the Working Group. The final meeting of the Working Group concluded last month. The recommendations from the Working Group will be forwarded to DOT and Congress in the fall. In the meantime, a two-year, four-state pilot program is about to begin to test the feasibility of the Working Group recommendations. In view of the pending pilot, it is premature to comment substantively on the adequacy or inadequacy of the Working Group's recommendations. However, there are four issues that are relevant and appropriate to bring to the Subcommittee's attention at this time.

II.A. First, the Working Group concluded its activities without developing criteria by which states or localities will evaluate permit applications to determine the sufficiency of the application and thus standardize the issuance of permits to prospective hazardous materials motor carriers in a timely fashion. In addition, no criteria were developed to assist states in the evaluation of a carrier's continued fitness to transport hazardous materials in the event a permit condition is violated. Without such criteria, industry cannot be assured that the playing field will be level, nor can permit-issuing jurisdictions be assured that permits they would have denied, suspended or revoked would in turn be treated the same in other participating jurisdictions. Finally, we understand DOT is overseeing the development of criteria to evaluate the pilot program itself, but we have not seen these criteria.

We urge Congress to require that such evaluative criteria be developed with an opportunity for public, including industry, comment. The criteria should address the standards for review of each piece of information required to be submitted through the application process and the penalties which will result if permit or registration conditions are violated. Any information elements for which evaluative criteria cannot be developed should be identified during the pilot and eliminated.

II.B. Second, consistent with the prohibition in Section 22, the Working Group recommendations do not seek to define or limit the amount of any fees which may be imposed or collected by states under this proposal. The CWTI reads this prohibition to preclude the Working Group from setting the level of fees a state may collect, not the procedures a state would use to collect the fees. For example, we believe the uniform procedures should require fee schedules that apportion fees for interstate carriers. State and local representatives on the Working Group are resistant to changes in existing flat fee systems despite the fact that, if challenged in court, the fees would likely be found unconstitutional.

CWTI urges Congress to clarify that the regulations emanating from Section 22 can and should address the procedures, including formulas, states use to assess fees. We further urge that you require these fee formulas to be consistent with the intent of the Commerce Clause as interpreted by court decisions concerning interstate fee apportionment.

II.C. Third, while the recommended forms and procedures do not dictate formulas for the uniform computation of fees, they do provide a uniform and reciprocal method for collecting and distributing fees set by participating states pursuant to Section 13(b). To be consistent with Section 13(b), fees imposed by non-federal entities must be equitable and used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response. The Working Group recommendations also provide for the imposition of both registration and permitting processing fees as well as a surcharge to support the activities of a "National Repository" which will oversee the administration of the uniform program.

For Congress to effectively evaluate whether these fees meet the "equitable" and "used for" criteria, states need to disclose fee information. Every two years the Institute surveys states to determine the use of fees collected from hazardous waste transporters. The last survey completed in December 1992 found that thirty states assess some type of fee on the transport of hazardous waste. Of the thirty, only two states specifically said the fees were used for transportation or transportation-related expenses.

To provide a basis from which to evaluate whether fees are equitably related to the safe transportation of hazardous materials, states, for themselves and on behalf of political subdivisions within their jurisdictions, should have to report annually to Congress and to DOT on the rates charged motor carriers for processing fees, surcharge fees, and hazardous materials transportation activity fees, and the uses to which those hazardous materials transportation activity fees are put.

II.D Fourth, the pilot program is currently scheduled to terminate in two years. The results of the pilot will be shared with DOT in the expectation that federal rules will be promulgated within the following year. We are concerned that the efforts of the pilot states not be abandoned at the end of the project. These states will have gone to great lengths to make a uniform and reciprocal program work, facilities will have been obtained and staff hired to oversee the operation of a model National Repository. The pilot states can serve as the core organizational unit of the implementing program. The CWTI believes that these states should continue to receive support to carry them over until the federal rules are finalized.

III. Class 9 Designation and Restoration of the Class 9 Placard for Domestic Shipments (P.L. 101-615, Section 25)

Congress, emergency responders and the regulated community have waited with anticipation for the release of the Transportation Research Board (TRB) report on Hazardous Materials Shipment Information for Emergency Response (Report). The Report identified six categories of information failures that adversely affect emergency response. Two of those "failures" can be shown to be a consequence of recent decisions of the DOT with respect to the scope and status of the Class 9 materials. Specifically, the TRB found that problems result when:

- information sources are in compliance with regulations and accessible, but they fail to efficiently convey important information to responders; and

- information is insufficient because the material or shipment is exempt from some federal hazardous materials transportation regulations.

Since HMTUSA was enacted, DOT has finalized regulations which will greatly expand the categories of hazardous materials that have historically been designated as Class 9 materials. As opposed to other hazard classes, Class 9 materials are not currently defined by specific criteria. Designation of Class 9 materials rests with each country's competent authority. Nevertheless, there are some similarities. Other countries typically designate as Class 9 materials those materials they regulate as hazardous waste which do not meet the criteria for designation in another hazard class.

Class 9 is one of several hazard class designations recommended by the United Nations for the transport of dangerous goods. In the interest of international uniformity, DOT has finalized a massive rulemaking -- Docket No. HM-181 -- which was intended, among other things, to comport domestic requirements for the transportation of hazardous materials with international standards. During this rulemaking, CWTI urged DOT to adopt the

Class 9 designation for former ORM-E (EPA-designated hazardous wastes and hazardous substances) materials. Initially, DOT redesignated these former ORM-E and ORM-A materials (materials which can interfere with the correct performance of assigned duties of flight crews if released during air transportation) as Class 9. Subsequent to that time, DOT has designated a variety of previously unregulated materials as Class 9. These materials include marine pollutants, elevated temperature materials, and oils. This proliferation of diverse materials within Class 9 has resulted in two consequences identified by the TRB Report.

III.A. First, the Class 9 designation now fails to convey meaningful information about the transport risks presented by such a range of materials. We are concerned that the United States is retreating from its commitment to the spirit of harmonizing hazardous materials transportation requirements by some of its recent additions to Class 9.

If the United States wants to regulate other categories of materials as hazardous such as "oils" and "elevated temperature materials," Congress should require DOT to use ORM (otherwise regulated materials) designations to distinguish such categories in domestic regulation until the United Nations accepts these categories of materials as Class 9 materials.

III.B. Second, DOT has eliminated requirements to use the Class 9 placard for domestic shipments compounding the information gap problem. DOT claims the diversity of materials which now constitute Class 9 make placarding a useless exercise. Moreover, according to DOT, Class 9 materials are of such low risk that they do not deserve to be recognized by a placard in the same manner as Class 3 (flammable) materials, for example. The CWTI believes, however, that in emergency response situations, no cargo information is too trivial.

The reversal of DOT's policy was accomplished without notice and opportunity for public comment via an announcement of "editorial and technical" corrections to HM-181. It does not appear to us that such a policy reversal, especially after a final rule on the subject has been in place for two years, is either editorial or technical. This action gives rise to a number of policy considerations that deserve review.

- Elimination of the Class 9 placard is at cross-purposes with the charge given DOT by Congress through HMTUSA to make improvements to the current system of placarding vehicles.

- Elimination of the Class 9 placard is at odds with the stated objective of DOT which is to achieve conformance with United Nations standards for the transport of dangerous goods.

- Elimination of the Class 9 placard denies emergency responders information that certain types, quantities or combinations of low hazard waste and substances, PCBs, or marine pollutants are on board.

- A range of safety regulations is triggered by placards. Such regulations are no longer required of persons transporting Class 9 materials. These requirements include:
  - CDL hazardous materials endorsement for drivers;
  - stricter penalties for drug and alcohol use violations;
  - possession of at least a conditional safety rating;
  - federal HazMat Registration to provide funds for hazardous materials planning and training; and
  - conformity with HazMat highway routing requirements.

Neither the public at large nor emergency responders are well-served by DOT's action. Furthermore, regulators are imposing other, potentially less effective regulations to compensate for the loss of the Class 9 placard for domestic shipments. To illustrate, the principal justification for a non-federal marking requirement imposed on vehicles transporting hazardous waste by the State of Michigan in a pending preemption determination proceeding is the elimination of the Class 9 placard for domestic shipments. Likewise, the HMTUSA-designated Working Group on state uniform hazardous materials registration/permitting forms and procedures deviated from its recommendations for the coverage of entities that would be required to obtain state registrations and/or permits in order to compensate for the loss of the domestic Class 9 placard. Originally, only motor carriers operating placarded vehicles would have been subject to Section 22 provisions. As amended, the Working Group recommendations now include motor carriers transporting hazardous waste under the Uniform Manifest. The Working Group was too concerned about the possibility that niche Class 9 transporters of hazardous waste would not be picked up in the state uniform registration/permitting process in the absence of a Class 9 placard mandate.

The CWTI and others petitioned DOT last year to reverse its decision to allow time for industry to prepare for the termination of the transition period leading to the mandatory use of United Nations placards on October 1, 1994. DOT has not responded to those petitions, but has indicated that the rulemaking initiated pursuant to HMTUSA Section 25 -- Docket No. HM-206 -- may be a vehicle to address Class 9 concerns. However, the opportunity for public comment on HM-206 is closed and the elimination of the Class 9 placard was not announced during the public comment phase as an issue for which comments were solicited.

The CWTI urges Congress to direct DOT to restore the Class 9 placard pursuant to United Nations recommendations for domestic

shipments. If DOT believes the Class 9 placard no longer accomplishes its purpose because of the recent proliferation of materials now designated Class 9, DOT should consider other hazard classifications, such as the ORM designation we recommended earlier, rather than forsake the purposes and goals of international uniformity.

IV. Clarification of Routing Requirements (P.L. 101-615, Section 4(b))

While we support the concept of states' designating hazardous materials routes based on federal standards, we have concerns about some of the legislative constraints on DOT implementation of the standards. For example, DOT can give no weight to the established routing factors and pre-1990 routes are grandfathered.

IV.A. Section 4(b)(9) of HMTUSA prohibits the federal government from assigning weights to federal routing factors that must be used by states choosing to route placarded highway shipments of hazardous materials. We are concerned, in the absence of a federally assigned weighting scheme, that states may choose to assign such low weights to certain factors, such as burdens on commerce, that the factor has no relevance in the routing determination.

The CWTI recommends that Congress either lift the prohibition on federal weighting so that DOT can develop a national scheme to ensure that some factors are not rendered meaningless, or alteratively Congress should require states to disclose the weights they have assigned to the federal routing criteria. Furthermore, we would hope that you will require the opportunity for public comment before allowing a weighting scheme to become final.

IV.B. More importantly, CWTI is concerned about the grandfathering of pre-HMTUSA routes as provided by Section 4(b)(4)(B) of the Act. Not only does the grandfather clause protect routes that have heretofore been found preempted by DOT under its pre-1990 inconsistency ruling procedures, but it ignores the fact that the conditions which prompted the routing requirement can and do change.

We urge you to amend HMTA to provide for periodic reevaluation of routes, including grandfathered routes, to see if such routing continues to be justified based on the federal routing factors.

V. Clarification of Financial Responsibility Requirements

As this Subcommittee is aware, public policy affecting the transportation of hazardous materials is not confined solely to the HMTA. Consequently, we urge you to take the opportunity

presented by this reauthorization to clarify the financial responsibility requirements of the Motor Carrier Act of 1980, Section 30, as they affect motor carriers of hazardous materials.

DOT has implemented the financial responsibility requirements so that motor vehicles with capacities in excess of 3,500 water gallons transporting the same material may be covered at different amounts. It is our view that the same minimum level of financial responsibility -- in this case $5 million -- be required of all motor carriers operating any type of DOT authorized packaging capable of carrying hazardous substances in excess of 3,500 water gallons, not just cargo tanks, portable tanks, and hopper-type vehicles.

At issue is DOT's reliance on the Truck Trailer Manufacturers Association's definition of a "hopper" -- conveyances with "sloping panels at the bottom of the tank which direct dry bulk solids to the outlet piping" -- to define "hopper-type vehicle." We request that DOT's definition of "hopper-type vehicle" for purposes of financial responsibility include "dump trailers" and "roll-off containers."

While some hazardous substances may be transported in "hopper-type vehicles," we know of no hazardous substances that are also hazardous waste being transported in conveyances with "sloping panels at the bottom of the tank which direct dry bulk solids to the outlet piping." Bulk quantities of hazardous wastes which are also hazardous substances are transported in dump trailers or roll-off containers, packagings authorized by DOT. The incongruity of DOT's policy is further exacerbated by the fact that DOT, in an interpretation of the hazardous materials regulations (HMRs), defines a "dump trailer" as a "hopper-type vehicle."

A review of the legislative history reveals that Congress intended to require motor carriers operating any type of vehicle with a cargo capacity in excess of 3,500 water gallons for the transportation of hazardous <u>substances</u> to maintain a minimum $5 million in financial responsibility. Congress "want(ed) to emphasize its strong belief that many ... hazardous <u>materials</u> should <u>also</u> be subject to at least a $5,000,000 minimum, especially hazardous materials transported in bulk." (Emphasis added.) In short, Congress intended that motor carriers of hazardous substances in vehicles with capacities in excess of 3,500 water gallons operate with a minimum $5 million in financial responsibility and that DOT should actively consider designating other types of hazardous materials that in bulk quantities should trigger a motor carrier's compliance with the $5 million minimum financial responsibility requirement.

Likewise, a review of the regulatory history of Section 30 shows that no attempt was made to seek public comment on how the term

"hopper-type vehicle" should be defined. Instead, the DOT states in its notice of proposed rulemaking that "Section 30 ... distinguishes between different types of hazardous materials and prescribes a $5 million minimum level of financial responsibility for the transportation of specified hazardous materials ... thus, as contemplated by the statute, should the Environmental Protection Agency add an item to its hazardous substances or waste lists ... motor carries would be responsible for meeting the $5 million financial responsibility requirements while transporting those materials in sufficient quantities." (Emphasis added.) The final rule states that "Congress established a tiered system to require various levels of financial responsibility based on commodities transported by the motor carrier." (Emphasis added.) There was no effort, but there was the opportunity, to qualify these statements by a mention of types of conveyances.

In DOT's opinion, its interpretation of "hopper-type vehicles" is clear because the words of the regulations track the words of the implementing statute. According to DOT, any change to its interpretation of which vehicles or operations are subject to the $5 million in financial responsibility must be "a legislative one and cannot be addressed by a regulatory agency."

We recommend that Congress either clarify its intentions with respect to the assignment of minimum levels of financial responsibility for motor vehicles transporting bulk shipments of hazardous substances or require DOT to open the public docket to request comment on the definition of "hopper-type" vehicle so that the definition of "hopper-type" vehicles can be justified and reconciled with real world business operations and definitions of hopper-type vehicles used pursuant to the HMRs.

Conclusion

The CWTI supports the proposed three-year reauthorization cycle proposed by H.R. 2178. However, we hope the Subcommittee will be open to augmenting that legislation with the policy refinements I have outlined today. We look forward to working with you and your staff in this endeavor. Meanwhile, thank you for the opportunity to testify on this important matter.

NATIONAL TANK TRUCK CARRIERS, INC.
THE NATIONAL ORGANIZATION SERVING THE FOR-HIRE TANK TRUCK INDUSTRY

CLIFFORD J. HARVISON
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BEFORE THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

UNITED STATES HOUSE OF REPRESENTATIVES

In The Matter Of:

REAUTHORIZATION OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT

Testimony Of:

National Tank Truck Carriers, Inc.
2200 Mill Road
Alexandria, VA 22314
(703) 838-1960

Clifford J. Harvison, President

June 8, 1993

BEFORE THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

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Testimony Of:

National Tank Truck Carriers, Inc.
2200 Mill Road
Alexandria, VA 22314

Mr. Chairman and members of the Committee, thank you for the opportunity to testify in support of reauthorization of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA).

My name is Cliff Harvison, and I am President of National Tank Truck Carriers, Inc. (NTTC) a trade association the members of which are extensively involved in the transportation of hazardous materials, hazardous substances and hazardous wastes throughout the continental United States.

Just about three years ago, the Congress (led by this Committee) concluded an extensive reevaluation and restructuring of the nation's laws and regulations dealing with hazmat transportation by passing HMTUSA.

That important legislation focused on three critical elements of considerable importance to the tank truck carrier:

1) it redefined and clarified the regulatory roles of the Federal government versus those of states and local jurisdictions;

2) it provided resources and programs to train emergency response personnel who are "at risk" at the scene of an accident or incident; and,

3) it directed the Secretary of Transportation to implement a registration and permitting program which will (eventually) enhance both compliance and enforcement.

Simply stated, the members of NTTC supported those objectives in 1990; and, we see no reason for the Congress to alter the present course.

Importantly, one must note that Congress did not pass HMTUSA in a vacuum. For instance the uniformity and safety mandates (of HMTUSA) blend well with prior Congressional action dealing with Commercial Drivers' Licenses and mandatory drug and alcohol testing which impact all operators of trucks regardless of the nature of the cargo.

Perhaps the only "glitch" we see on the horizon (and a matter we trust will be reviewed by this Committee) concerns fees for state hazmat carrier registration programs.

Presently, HMTUSA has created a Federal on-going registration program for shippers and carriers of hazardous materials. The annual registration fee is currently set at $300. At the same time, HMTUSA permits individual states to levy fees on those same carriers and shippers. Basically, the proceeds from both fees are to be directed to the enhancement of training and enforcement at the state and local levels of government.

We have no problem with the "concepts" involved; however, we do believe that some states might be tempted to impose fee levels so high as to defeat the basic purposes of HMTUSA and/or become simply another "revenue raiser".

The current statutory language, properly, places no "dollar cap" on the level of state fees. By the same token, the only "test" that a state must meet in a showing that the fee is "equitable" and that "...it is related to the transportation of hazardous materials". I believe the potential for abuse is obvious.

Mr. Chairman, we respectfully ask that this Committee and the Congress amend HMTUSA to require states (which choose to levy hazmat registration fees) to (at the very least) publicly disclose the financial basis of any registration fee. This should enable interested parties to assure that state "hazmat" registration fees are set according to Congressional guidelines without imposing burdens on state officials and administrators.

Again, Mr. Chairman, I thank the Committee for the opportunity to testify in support of reauthorization (with minor clarifying amendments), and I will attempt to respond to any questions.

Respectfully submitted,

Clifford J. Harvison
President

TESTIMONY
before
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
United States House of Representatives

by

Barry M. Horowitz
President and Chief Executive Officer, The MITRE Corporation
and
Chairman, National Research Council Committee for the Assessment of a
National Hazardous Shipments Identification System

June 8, 1993

Mr. Chairman and Members of the Committee. My name is Barry M. Horowitz. I am President and Chief Executive Officer of the MITRE Corporation. With me is Joseph Morris, Senior Program Officer at the Transportation Research Board. I am pleased to be here this morning to tell you about the Transportation Research Board's study of a central reporting system for hazardous materials shipments. As you are aware, this study was requested in the Hazardous Materials Transportation Uniform Safety Act of 1990 and was funded by the U.S. Department of Transportation.

To conduct this study, the Transportation Research Board, which is a unit of the National Research Council, the operating agency of the National Academy of Sciences, assembled a committee of experts in hazardous materials safety, freight transportation, and information systems. I was Chairman of this committee, and as Chairman, I can assure you that the committee indeed had a great deal of expertise in the relevant areas and lots of interest in the subject of our study.

We were asked to study the feasibility and necessity of a central reporting system and computerized telecommunications center for receiving and retrieving data concerning all daily shipments of hazardous materials, that

could provide information to facilitate responses to incidents involving hazardous materials transportation.

To conduct its study, the committee first needed an understanding of the information requirements of emergency responders and the adequacy of current practices for meeting those requirements. We found that existing programs for compiling data on the frequency and circumstances of incidents are not adequate to support evaluations. To fill this gap, we took it upon ourselves to analyze 125 incidents and, where possible, interviewed the emergency responders involved to develop a small representative data base of incident case studies. An additional aspect of our study was a set of interviews of shippers and carriers to learn about the shipment information systems they maintain and how they might be affected by shipment reporting requirements.

Regarding the necessity of improved information, we found that responders could not obtain information that they sought about the presence or identity of hazardous materials, or experienced significant delay in obtaining it, in about 25 percent of consequential highway incidents in our case studies and 10 percent of consequential rail incidents. (By "consequential," we mean incidents involving injury, substantial property damage, evacuation, or major traffic delay.) The information deficiencies did not necessarily cause the adverse consequences of these incidents.

The causes of information failures are complex. For example, required shipping documents or placards (the main sources of information) may be absent or in error, they may be destroyed or inaccessible, or they may be in compliance with regulations but nonetheless fail to give responders some important pieces of information. Often, because of past experience, responders decide they cannot trust information they do obtain.

We found that lack of information at incidents has sometimes delayed response and increased risks, and that improved information would potentially reduce adverse impacts of incidents: injuries, property damage, evacuations, traffic delays, and non-optimal use of emergency response resources. However, most of these costs are not the result of poor information, so improved information could produce only fractional cost savings. In addition to its value in more routine events, improved information might help avoid some consequences of rare but catastrophic hazardous materials incidents.

Because the causes of information failures are complex, the committee concluded that reducing the frequency of failures would require extensive changes in regulation, enforcement, and training. Automated information systems could complement these needed changes, but they would not substitute for them. For example, automated systems might help responders deal with complex situations by organizing information, strengthen enforcement by creating a monitoring mechanism, or incorporate features to reduce the likelihood of human errors. Learning how to make effective use of technology will require some experimentation and a sequential process of introducing capabilities and measuring value added.

Regarding feasibility, the committee concluded that an automated information system for emergency responders could be reliable and cost-effective only if it were built on a base of shippers' and carriers' own information system resources. Shipper and carrier systems for shipment tracking and inventory control are rapidly developing in sophistication, but use of these technologies by smaller firms is currently very limited.

I will now summarize the committee's recommendations. First, Congress and the responsible federal agencies should plan and carry out a program to

improve the existing system for providing information to emergency responders at hazardous materials transportation incidents. This program should include appropriate measures to apply technology; reforms in regulation, enforcement, and training; and evaluation of the existing system so that efforts can be directed at the most pressing problems.

Second, DOT should immediately undertake one or more limited start-ups of automated information systems. An information system for rail shipments would be a practical starting point. This limited start-up would give emergency responders access to rail industry car-tracking and cargo-tracking systems, which are the results of major industry investments. All major railroads provide current information to shippers describing the location and recent movements of rail cars carrying their shipments. These systems could be modified to provide information about car contents to emergency responders. Such a prototype would provide an experimental setting for resolving many of the organizational, technical, and cost-effectiveness questions that must be answered in designing an information system. We estimated that the cost of a start-up system evaluation involving one railroad would be $4 million and that this could be expanded to a trial of a nationwide system for rail for an additional $3 million. The large rail industry investment in information systems that has already taken place would provide a major leveraging of the dollars spent on this limited start-up. If evaluation of the trials showed that such a system was worthwhile, this effort could lead to a useful capability within 3 years.

To address deficiencies in data about hazardous materials incidents, the agencies that maintain such data should coordinate to ensure that data are collected uniformly and fill critical knowledge gaps. In particular, DOT

should establish a monitoring capability that allows it to determine whether its regulations intended to provide emergency responders with information at hazardous materials transportation incidents are working adequately.

Next, to correct the failures in the existing information system that we observed in our incident case studies, the committee recommends that DOT and other responsible federal agencies should form a plan of action to alleviate each of the specific categories of failures that we identified, through changes in regulations, more effective enforcement, and support for improved training of emergency responders and inspectors. The committee report proposes possible components of this action plan, but we lacked the resources to evaluate the effectiveness or cost of each of these.

Finally, the committee recommends that the government not attempt to implement a system such as the originally proposed national central reporting system, that is, one entailing immediate and universal application of a requirement for shipper or carrier real-time filing of vehicle contents information in a central data base. There is no sound basis for defining performance criteria for information to be provided and threshold reliability needed in such a system; there would be no opportunity to allow ongoing evaluation to guide implementation, as a phased implementation would allow; and the system would not be designed to make maximum use of existing shipper, carrier, and responder capabilities. Rather, we believe that the staged approach recommended is the best way to achieve long term safety improvements.

Mr. Chairman, this concludes my statement. Mr. Morris and I will be pleased to answer questions that the Committee may have.

Attachment
Testimony of Barry M. Horowitz
June 8, 1993

Special Report 239

HAZARDOUS MATERIALS SHIPMENT INFORMATION

FOR EMERGENCY RESPONSE

Committee for the Assessment of a National
Hazardous Materials Shipments Identification System

Transportation Research Board
National Research Council

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Committee for Assessment of National Hazardous Materials Shipments Identification System

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Executive Summary

Fire fighters and police regularl respond to incidents involvin the release or threat of release of hazardous materials in transpor Minimizing the danger of injury and other costs of such events requir knowledge of the materials so that appropriate fire fighting and oth mitigation methods can be used and decisions made regarding evacu tions or traffic diversion. Hazardous materials are substances that a flammable or toxic or have other properties that would threaten h mans if the substances were released. Government regulations requi that certain shipments of hazardous materials be identified wi placards on vehicles and shipping documents accompanying them, b lack of necessary information at the scene of an incident has sometim interfered with response and led to increased losses.

To improve information for responders at hazardous materials tran portation incidents, creation of a national computerized central repor ing system and data center has been proposed. Shippers and carrie would be required by federal law to enter a record of each hazardou materials shipment, and police and fire fighters would have access t the information at the time of an incident. Congress called on th National Academy of Sciences to examine the feasibility and necessit of such a national central reporting system.

The recommendations of the National Academy of Sciences commit tee that conducted the study are listed below. All committee member

e in agreement with each of the eight recommendations. However, embers differed in their ranking of the relative importance of the commendations and therefore in their preferences for the order in hich the recommendations should appear. In particular, some mem- rs felt that Recommendation 8 should appear first because it is the commendation most closely related to the specific question of the ngressional charge for the study and because it is important to set undaries on the kinds and scale of actions that are justifiable to rrect identified problems. Other members believed that the presenta- n should emphasize the need for improvements and recommenda- ns that lead to positive actions to improve hazardous materials safety ecommendations 1–7).

Because of these differences, the order of the recommendations ould not be interpreted as reflecting a committee consensus on iorities. The committee believes that all its recommendations merit tion and that acting on all of them would be the most efficient way to sure progress in improving emergency responder access to vital formation at hazardous materials transportation incidents.

The recommendations are repeated with explanations later in this xecutive Summary. Congress should provide the responsible agencies ith the funding necessary to conduct the initiatives recommended.

1. Improvements to the existing system for providing information to mergency responders at hazardous materials transportation incidents re necessary. In a significant proportion of consequential incidents, esponders are unable to obtain information they seek. Therefore, Congress, the U.S. Department of Transportation (DOT), and other esponsible federal agencies should plan and carry out a program to mprove the system. This program should include appropriate mea- ures to apply technology; reforms in regulation, enforcement, and raining; and evaluation of the existing system so that efforts can be irected at the most pressing problems.

2. DOT should immediately undertake one or more limited start- ps of automated information systems. The start-ups should be con- rolled experiments with rigorously designed evaluation protocols. A ractical limited start-up is identified in the last section, involving an nformation system for rail shipments (see p. 15).

3. DOT should, on an ongoing basis and in conjunction with the shipper and carrier industries and emergency responders, system- atically investigate opportunities for application of information tech-

nology to aid emergency responders and reduce the costs of hazardous materials incidents.

4. The U.S. Fire Administration of the Federal Emergency Management Agency, DOT, and other federal, state, and local agencies that maintain data bases of hazardous materials incidents should formally coordinate to ensure that data are defined and collected uniformly, duplicate reporting is avoided, and data collection is designed to serve essential program evaluation and research needs.

5. DOT should establish a monitoring capability that allows it to determine whether its regulations intended to provide emergency responders with information at hazardous materials transportation incidents are working adequately. Monitoring should be planned and conducted with state and local government participation.

6. DOT, together with other responsible federal agencies, should form a plan of action to alleviate each of the six categories of information failures identified in this study (see p. 7) through changes in regulations, more effective enforcement, and support for improved training of emergency responders and inspectors. Possible components of this action plan have been identified (see pp. 18–20).

7. DOT and the U.S. Fire Administration, with the full participation of state and local emergency response agencies, should jointly conduct a study of costs and means of organizing and delivering training to hazardous materials emergency responders and enforcement officers.

8. The government should not attempt to implement a system such as the originally proposed national central reporting system, that is, one entailing immediate and universal application of a requirement for shipper or carrier real-time filing of vehicle contents information in a central data base.

STUDY APPROACH AND SCOPE

The approach to the study was to analyze

- The value of improved information by identifying (*a*) the information that emergency responders need to make decisions at incidents; (*b*) the performance of existing means of providing information; and (*c*) the frequency, causes, and consequences of information failures;
- Technological options that might offer solutions to information problems, including the national central reporting system and other

lesigns, by considering the cost, technical feasibility, and organizational requirements for implementing such systems; and

- Regulatory, enforcement, and training options for solving the nformation problems, that is, refinements within the existing system or identifying hazardous materials that would not necessarily depend on adoption of information technology.

The scope of the study was limited to matters that may affect the consequences of hazardous materials incidents after they occur, and not to methods of preventing incidents. Incident prevention is fundamental to reducing risks to emergency responders and the public. The methods examined in this report for improving emergency response in general would not directly contribute to or substitute for accident prevention programs. Also, the scope was limited to the safety of materials in transport rather than to safety of materials in use or storage at fixed facilities or in storage in transport vehicles or containers. Although the committee did not focus exclusively on any particular system design, it did focus on prospective systems that would be national in application.

Programs aimed at incident prevention and safety of fixed facilities also require supporting information systems. For example, incident prevention depends on analysis of the causes of past incidents, which requires a historical incident data base. For fixed facilities, local governments are already compiling data bases of hazardous materials stored in their jurisdictions, using information provided by hazardous materials users in accordance with Environmental Protection Agency (EPA) regulations. Also, information systems to record exposures of emergency responders to toxic materials might have value for studies and monitoring of responder health. Information systems for incident prevention, fixed facilities, monitoring of exposure, and response to transportation incidents might eventually be most effective as components of a single system. This study did not consider such comprehensive data needs or estimate costs and benefits of such a comprehensive information system.

The scope of the investigation of information needs and failures was limited further to public-sector emergency responders, as opposed to private responders (e.g., transportation company employees who deal with incidents occurring on company property), because assistance to public-sector responders was the objective of the original central re-

porting system proposal and public-sector requirements would dictate the design of any new information systems.

The conclusions are relevant to all modes of freight transportation—air and water as well as truck and rail. However, since nearly all hazardous materials transportation incidents involve truck or rail, data collection and analysis concentrated on these modes.

NECESSITY AND VALUE OF IMPROVED INFORMATION

There has never been a comprehensive evaluation of the information needs of emergency responders at hazardous materials transportation incidents or of the performance of the existing system in providing information. Before an improved system can be designed, it will be necessary to understand responders' information requirements at incident scenes and why current practice (relying on placards displayed on vehicles, labels on packages, documents carried in vehicles that identify hazardous materials on board and give emergency response information, and a mandatory 24-hr emergency telephone number for access to the shipper) sometimes fails to meet those requirements.

To begin to fill these gaps in understanding, incident data bases were reviewed, emergency responders and managers in industries responsible for hazardous materials handling were interviewed, and case studies of consequential incidents (i.e., those involving injury, substantial property damage, evacuation, or major traffic delay) were conducted. The case studies were supplemented with descriptions of consequential incidents investigated by the National Transportation Safety Board (NTSB). The total of 125 cases are representative examples of all incidents of comparable severity.

The case study data have important limitations: the size of the sample was small considering the diversity of incident circumstances; NTSB does not randomly select the cases it investigates; information about incidents and consequences was often incomplete; follow-up conducted for this study was limited and was conducted some time after the incidents occurred; and any long-term or delayed health effects of exposures to materials would have been especially difficult to observe. Therefore, it is likely that some consequences were overlooked, and all conclusions drawn from the data must be regarded as tentative. Nonetheless, the data and analysis are more complete than in any previous examination of the issues.

Hazardous Materials Transportation Safety

Roughly 10,000 to 20,000 truck transportation incidents and roughly 1,000 to 1,500 rail incidents occur each year that involve release of a hazardous material or a circumstance that threatens a release and to which public-sector emergency responders are dispatched. In the majority of these incidents, the costs are confined to cleanup and use of emergency response resources. As many as 1,000 incidents annually have greater consequences: injury, substantial property damage, evacuation, or major traffic delay (only part of these costs is attributable to the presence of the hazardous material). In the case studies, there was an average of two reported injuries per consequential incident. In most consequential incidents no injuries were reported, but in a few, there were numerous injuries. About half the injuries in the case studies appeared to be related to the presence of the hazardous material.

Information Requirements

Information needs are driven by the decisions that emergency responders must make: what protective equipment is needed to approach the incident; whether danger of toxic exposure, fire, or explosion justifies a highway closing or evacuation; whether to use water or other chemicals to extinguish a fire; how to stop and contain a release; and how to dispose of spilled material.

The case studies show that responders need to determine the following critical information items: whether hazardous materials are present in the incident, the general type of hazard (e.g., flammable, poisonous), and the specific identities of the hazardous materials. Responders may also need other facts about the shipment, information about the surroundings, and expert advice. These needs can be divided into two categories: information specific to the vehicles involved (e.g., identity of materials) and information that is not vehicle specific (e.g., properties of materials). Provision of vehicle-specific information is the defining characteristic of the original national central reporting system proposal.

Performance of the Existing System

The case studies indicate that the existing system fails with some regularity, and these failures can have costs. Perhaps most significant,

many emergency responders interviewed expressed lack of full confidence in the system.

Among the case studies, in about 25 percent of consequential highway incidents and 10 percent of consequential rail incidents, emergency responders were unable to obtain information that they sought or experienced significant delay in obtaining it. In the remaining incidents, the existing system performed adequately: responders obtained credible information in the format required by regulations. In those incidents with information deficiencies, the adverse consequences were not necessarily caused by the deficiencies. With the percentage of deficiencies just cited, roughly 200 consequential incidents would occur annually nationwide in which emergency response information would be seriously deficient.

Six categories of information failures appeared in the case studies:

- Required sources of information, such as placards and shipping papers, were missing or inaccurate.
- Placards, shipping papers, or other information sources were obscured, destroyed, or inaccessible because of a crash or fire or threat of fire, explosion, or toxic exposure.
- Information sources were in compliance with regulations and accessible, but they failed to efficiently convey important information to responders.
- Information was insufficient because the material or shipment was exempt from some federal hazardous materials transportation regulations (because quantities were too small to require placarding, the material was not regarded as being in transport, or the material was not designated as hazardous in regulations).
- The vehicle operator was unprepared to provide information.
- Responders failed to obtain or use available information.

Because of uncertainty in assessing the consequences of failures in the case studies and other limitations of the data, ranking the severity of these problems is difficult. However, the most common problems in the case studies were the first, third, and fourth categories listed above: required information was missing, information was in compliance and accessible but was not adequate for responders' needs, or information was insufficient because the shipment was exempt from some regulations. Instances of destroyed or inaccessible papers and placards were

much less common because the great majority of incidents do not involve a serious crash or fire.

Results of roadside inspections to enforce truck regulations support the case study finding that regulatory violations are a common problem. In inspections, roughly one-third of trucks required to be placarded are cited for some violation of material identification regulations.

The frequency of information problems is not uniform among all segments of transportation. For example, a common kind of incident with information problems involves trucks carrying mixed loads. Mixed loads present problems because placards do not identify specific hazards when quantities are small, shipping papers can be voluminous when a truck is carrying multiple shipments, drivers are less likely to be familiar with cargoes, the appearance of the truck does not give information about contents, and responders must be concerned with hazards from interactions of materials. Because quantities are smaller, mixed-load incidents tend to be less severe than bulk-load incidents, but response is often protracted because of information problems.

Benefits of Improved Information

Improving the reliability of hazardous materials identification could reduce consequences in extreme circumstances by helping to ensure that actions are taken to protect the public and fire fighters from threat of injury. Because of the limitations of small sample size and incomplete data, the case study analysis did not provide a firm basis for estimating the linkage between information and injuries and illnesses. In the case study incidents, most reported injuries were apparently unrelated to the presence of the hazardous materials (e.g., injuries from impact in motor vehicle crashes) or occurred nearly simultaneously with the onset of the incident as the result of explosion or fire and before any emergency response could have occurred. However, some injuries related to the presence of the hazardous material occurred after some delay and thus might conceivably have been avoided through improved emergency response effectiveness. Hazardous materials incidents have been documented where faulty emergency response information led to injuries or deaths, although such circumstances were not evident among the 125 case studies specially developed for this study. The case studies suggest that the greatest opportunity for avoiding injuries through improved information is through more reliable initial warning

of the presence of the hazardous material—the function that the placard is intended to perform.

In more routine situations, more reliable information could reduce the need for evacuations or traffic diversions and allow more efficient use of emergency response resources. To reduce costs, an improved information system would have to produce an increase in reliability great enough to change the actions of emergency responders. The incident case studies indicate that emergency responders tend to take a cautious course of action, in part because they believe from experience that materials information can be unreliable. Responder actions may include precautions that have significant costs (e.g., traffic blockages or workplace evacuations) but are believed to be warranted to reduce the risk of injury or death as much as possible.

Because of the cautious practices of emergency responders, and because responders often do not have a wide range of options for dealing with an incident, small improvements in reliability or completeness of information might not alter responders' actions in many incidents. On the other hand, if the improvement in reliability were great enough to boost overall responder confidence, the result might be more efficient response—not just to those incidents in which information failures would otherwise occur, but in other instances where responders now take precautions that have costs because they do not trust available information.

For the estimated 200 annual consequential incidents with information problems, the combined costs of property damage, evacuations, traffic delays, productivity losses, and response personnel and equipment amount to several hundred million dollars. Data are insufficient to allow the estimation of environmental damage and cleanup costs. In addition, these incidents are associated with roughly 400 reported acute injuries and illnesses. Some of these costs are unrelated to the hazardous nature of the cargoes. The case study incidents suggest that improved information could prevent a fraction of the dollar costs of consequential incidents with information problems, for an annual savings in the tens of millions of dollars. Also, improved information probably would lead to more efficient use of emergency response resources in all hazardous materials transportation incidents, for savings that might amount to some additional millions of dollars annually. Finally, some fraction of the injuries and illnesses attributable to these incidents might be avoided through better information, but the data do not allow an estimate of this fraction.

These estimates, derived from the case studies, do not include possible benefits from reduced consequences of rare but catastrophic events. In the United States from 1946 to 1989 there were at least five truck or rail incidents in each of which 15 or more people were killed as a result of the presence of a hazardous material. Other severe incidents have occurred in waterborne shipping. A majority of these fatalities and incidents involved explosions of flammable liquids or gases nearly simultaneously with the onset of the incident, and improved emergency responder information would be unlikely to prevent deaths in such circumstances. However, greater information reliability and availability might help avoid some consequences of such catastrophes.

A 1988 incident in which six fire fighters were killed is one in which improved information might have saved lives. This incident was beyond the scope of the originally proposed national central reporting system because the hazardous materials involved were not being transported, but were stored in trailers and so were not subject to DOT hazardous materials transportation regulations. Therefore, to be useful in this incident, an information system would have had to cover hazardous materials in vehicles used for storage as well as materials in transportation. The deaths were caused by an explosion of blasting agents stored in two trailers set afire by an arsonist at a construction site. The trailer did not bear DOT placards, and in fact standards in effect at the time called for the removal of placards on explosives stored in vehicles subsequent to transportation. An investigation concluded that the fire fighters were informed en route of the possibility of explosives and apparently learned on the scene that the burning trailer was supposed to contain explosives; however, the investigation concluded that before the alarm, the fire department did not have knowledge of the type, quantities, or locations of the blasting agents. The availability of such information at the time of the alarm might have allowed fire fighters to plan how to deal safely with the incident. This incident also illustrates the need for improved coordination among DOT and the agencies that regulate identification of hazardous materials not in transport.

Efficacy of Possible Solutions

The primary intent of the original proposal for a national central reporting system was to allow material identification when papers or placards were inaccessible or destroyed, provided that the vehicle could

be identified and the responder knew or suspected that hazardou materials were present. The problem of inaccessible or destroyed pa pers or placards is one of the six categories of information failur identified in the case studies. The other five categories of informatio failure are related to underlying problems in regulations, enforcement or training: regulatory requirements governing shipment identificatio do not match emergency responders' information needs; regulation are violated; or inadequate training of shipper, carrier, or emergenc response personnel results in inappropriate actions. The success of th existing system in most incidents indicates that regulatory refinement and strengthened enforcement and training would improve perfor mance.

Development of a technology-based information system would no be a substitute for needed regulatory, enforcement, or training im provements, and problems in the existing system arising from suc sources as clerical errors or negligence could be replicated in any ne system. However, technological aids might complement regulator enforcement, and training improvements. For example, an informatio system might help responders deal with complex situations such a mixed loads by automatically organizing information to highlight pe tinent facts, it might strengthen enforcement by creating a monitorin mechanism, or it might have features designed to reduce the likelihoo of human errors. Of course, the introduction of new systems woul create new regulatory, enforcement, and training needs.

FEASIBILITY AND COST OF TECHNOLOGY APPLICATIONS

Attempts to introduce automation into an established system such a the existing hazardous materials emergency response information sy tem are unlikely to be successful unless three guidelines are followe

First, the advantages of automation are achieved only when th enterprise to be automated is well understood and well managed. I there is confusion about the process, efforts to automate often result i greater confusion. Performance criteria for an improved system can b defined only by studying the performance of the existing system. There fore, in the near term, efforts must be made to rationalize the existin information system and to measure its performance.

Second, the evolution of an information system should, as a primary ıctor of design, identify and take advantage of opportunities created y investments in other technological developments. Building on exist- ıg information systems in the transportation industry would be the ıost practical approach to a hazardous materials information system. laking use of systems that were in routine daily use for business urposes would be the best way to attain reliability, and the costs of ıch a strategy would be much less than the costs of procuring a stand- lone system.

Third, automation should be introduced in an existing information ystem in carefully planned steps. This approach allows for modifica- ons to resolve issues of human error, diligence, and training on the asis of evaluations of actual experience. Initial steps could be made ith those segments of the community who have already invested in utomated information systems and are experienced in their use. This epwise approach would provide a basis of experience for making cost- enefit trade-offs. To be most cost-effective, initial steps would ideally lso target segments in which the potential payoff from improved ıformation was greatest.

The originally proposed national central reporting system would not onform with any of these guidelines. Because knowledge about the ıformation needs of emergency responders and the causes of failures f the existing system is inadequate, there is no basis for determining a orthwhile increment in reliability or establishing other performance riteria for the new system. The originally proposed system would not e a phased implementation, and it would duplicate rather than inte- rate existing shipper and carrier information capabilities.

Building on existing capabilities is critical because of the rapid pace f introduction of innovative information technology in transporta- ion. Some firms in certain segments of the carrier and shipper indus- ries could comply today with most of the record-keeping and reporting equirements necessary to participate in a modified national central eporting system or in the clearinghouse option described in this report t a cost that would not be deeply disruptive. Throughout the transpor- ation industry, carriers and shippers are rapidly developing new capa- ilities for maintaining current records on goods in transit to reduce nventory costs, for monitoring vehicles to allow more efficient fleet tilization, and for eliminating paper transactions by use of electronic lata interchange.

These capabilities differ greatly by size of firm, industry, and mode. Rail is probably the most advanced, because automated car-tracking systems have been widely implemented. In other sectors, many firms have little or no shipment-tracking capability, and imposition of a national central reporting system requirement would force them to greatly alter their practices, increasing their costs.

Because many firms lack the information systems that would be required for compliance with a national central reporting system, rapid full-scale implementation of the system, which was a key feature of the original proposal, would be very unlikely to succeed. Firms would require time to develop, test, and perfect the needed internal information systems.

The cost components of an automated hazardous materials shipment information system would be shipper and carrier internal information systems, the central service facility, the emergency responder interface, enforcement, and training. The cost of shipper and carrier internal systems would be the largest component, much greater than the cost of the central facility. Therefore, the net cost would be highly sensitive to the extent to which shippers and carriers could use their existing investments in information technology to comply with system requirements. The cost also would depend on the functions the system supported; the number of shippers, carriers, and responders participating; the categories of shipments covered; and the level of reliability required. Cost estimates can only be illustrative and based on arbitrary assumptions, because the appropriate scale and functioning of the system could only be determined in an evolutionary process starting with test implementations.

Estimates were made for a hypothetical system including only larger emergency response agencies and shippers and carriers handling hazardous materials with some regularity. This would be a much more modest system than that envisioned in the original national central reporting system proposal.

If this hypothetical system were adopted today, initial capital and start-up costs would be on the order of $300 million and annual operation costs would be $250 million. If such an expenditure were made immediately, without thorough preliminary testing and evaluation, there would be no assurance that the system would produce a meaningful improvement in reliability or that its value would justify the cost.

Most of the estimated costs are for shipper and carrier information systems. However, the information system that shippers and carriers would have to install to comply with automated hazardous materials tracking requirements would be similar in some respects to systems that a few trucking companies and nearly all railroads have already adopted to meet internal management and customer service needs. Although such systems will not be ubiquitous in transportation within the foreseeable future, their use is spreading rapidly. Carriers with such capabilities already in place probably could avoid most of the costs of compliance that would be incurred by comparable carriers with no such capabilities.

RECOMMENDATIONS

Actions Needed To Improve Hazardous Materials Emergency Response Information

Improvements to the existing system for providing information to emergency responders at hazardous materials transportation incidents are necessary. Therefore, Congress, DOT, and other responsible federal agencies should plan and carry out a program to improve the system. This program should include appropriate measures to apply technology; reforms in regulation, enforcement, and training; and evaluation of the existing system so that efforts can be directed at the most pressing problems. Although this approach will take some time, it is the quickest means to bring about improvement, since attempts to implement improvements without analysis of needs and without testing would probably fail.

Several of the following recommendations call for data collection and evaluations. The committee has not estimated the costs of all of these activities in detail. However, their costs would be justified by the value of the reduction in the risks of hazardous materials transportation that could stem from them. As a first step, DOT and the other responsible agencies should estimate the costs of the recommended activities and submit proposals to Congress for funding. Congress should provide the necessary funds specifically for these purposes and should provide direction to the agencies responsible for carrying out the recommendations.

Implementing New Information Systems

DOT should immediately undertake one or more limited start-ups of automated information systems. Limited start-ups should be controlled experiments with independent, rigorously designed evaluation protocols. Their design, conduct, and evaluation should be governed by cooperative arrangements among participating federal, state, and local government agencies and participating shippers and carriers. Each limited start-up should be planned as the foundation for a widely implemented system, provided it is demonstrated to have benefits sufficient to justify its costs.

Examples of possible limited start-ups are

- Emergency responder access to carrier shipment-tracking systems via an established information network service;
- Incorporation of hazardous materials monitoring functions in truck automatic electronic identification demonstration projects, which federal and state transportation agencies now have under way or planned; and
- Emergency responder access to rail industry car-tracking and waybill data systems.

The rail industry limited start-up would be a practical starting point. All large railroads provide current information to shippers describing the location and recent movements of railcars carrying their shipments. The information can be provided over computer networks or via synthesized voice messages over ordinary telephones. The system could be modified to provide information on car contents to emergency responders.

A limited start-up of a rail system would be relatively straightforward to organize. It would demonstrate a service that emergency responders may find valuable and would provide an experimental setting for addressing many of the organizational, technical, and cost-effectiveness issues that any emergency response information system would face.

The other two suggested limited start-ups would be feasible, and in fact testing of hazardous materials applications is likely to be a component of the current truck automatic electronic identification demonstrations. However, the infrastructure and parallel industry investment for expanding these two beyond the prototype stage are only beginning

to develop, so they would not progress beyond the experimental stage for some time. Also, a limited start-up using an established information network service in trucking probably would require more investment in developing new systems than would the rail limited start-up, because the services now available fall short of the requirements of a hazardous materials information system.

The limited start-up should have federal government, industry, and emergency responder participation. Key participants would be at least one large railroad and several emergency response agencies in the railroad's territory. All participants, including responders, should be involved in defining performance criteria and planning the evaluations. Evaluation should include comparison of the timeliness and reliability of materials identification via the limited start-up system with those of current methods. The limited start-up could also compare alternative communications links between responders and the rail data base (including human interaction), alternative information resources for interpreting the cargo information received, and arrangements for data security.

The cost of a 2-year limited start-up involving one railroad, including costs to the railroad and emergency responders and costs for evaluation, is estimated to be $4 million. If evaluation of this trial showed evidence of reduction in incident costs, the limited start-up could be expanded in the third year to a trial of a nationwide system involving all major railroads. The second phase would bring the total cost to roughly $7 million.

DOT should, on an ongoing basis and in conjunction with the shipper and carrier industries and emergency responders, systematically investigate opportunities for application of information technology to aid emergency responders and reduce the costs of hazardous materials incidents. The guidelines described above should be applied to any technology application: performance criteria concerning the information to be provided and the reliability required must be defined by studying the performance of the existing system; automation should be introduced in planned steps to allow for evaluation and modifications to resolve problems; and applications should take advantage of developments in information and communication systems used by shippers, carriers, and responders. A further critical criterion in system design is provision for security of proprietary business data. DOT should track technical developments in transportation information and

communication systems to ensure that opportunities for applications to improve hazardous materials safety are not overlooked.

Data and Evaluation

The U.S. Fire Administration, DOT, and the other federal, state, and local agencies that maintain data bases of hazardous materials incidents should formally coordinate to ensure that data are defined and collected uniformly, duplicate reporting is avoided, and data collection is designed to serve essential program evaluation and research needs. In keeping with its current involvement in programs to assemble nationwide incident data, the U.S. Fire Administration would be the appropriate agency to lead this coordination. DOT and Fire Administration data systems should be made compatible so that they can be used jointly in analyses, and new efforts should be undertaken to ensure reliability of data collected in the existing systems.

DOT should establish a monitoring capability that allows it to determine whether its regulations intended to provide emergency responders with information at hazardous materials transportation incidents are working adequately. DOT needs to understand the information requirements of emergency responders, how frequently and why existing practices fail to provide that information, and the costs of information failures. Developing this understanding is a prerequisite to reducing the costs of hazardous materials incidents by improving information available to responders.

DOT's Hazardous Materials Information System (HMIS) was designed for purposes other than this monitoring function. For a variety of reasons having to do with reporting requirements and compliance, HMIS does not record the majority of hazardous materials incidents that involve public-sector emergency response and thus cannot serve as the monitoring system. Therefore a new data collection method is needed. It should be founded on a statistically valid sampling procedure. Rather than attempt to maintain a census of hazardous materials incidents for this purpose, a more practical approach could be for DOT to select a sample of emergency response agencies and investigate a sample of incidents chosen from the records of each agency. DOT should plan its monitoring of the effectiveness of the existing system to permit comparisons with the evaluations of the recommended limited start-up system. The monitoring should be planned and conducted

with advice from and participation of state and local emergency responders.

Regulation, Enforcement, and Training

DOT, together with the other responsible federal agencies, should form a plan of action to alleviate each of the six categories of information failures identified in this study through changes in regulations, more effective enforcement, and support for improved training of emergency responders and inspectors. Effective regulations and adequate training and enforcement will be essential components of any improvement in emergency response effectiveness. It was not possible in this study to assess the costs and benefits of specific possible regulatory, enforcement, and training actions. However, DOT should evaluate the proposals in the following table. The evaluations should estimate the costs to all parties of carrying out the regulatory, enforcement, and training actions and the potential benefits in terms of improved information and resulting reductions in the harmful effects of hazardous materials incidents. If DOT finds that the proposals are inadequate, it should devise other means that would correct the problems and yield benefits justified by the costs.

Problem	*Proposal*
Required sources of information are missing or inaccurate	Systematically monitor compliance as the basis for establishing targets for compliance improvement and measuring progress toward them
	Upgrade training of motor vehicle inspectors to ensure more uniform enforcement
	Improve effectiveness of enforcement of hazardous materials identification requirements in vehicle safety inspections
	Monitor the effectiveness of required shipper and carrier employee training programs
	Establish higher fines for certain hazardous materials identification violations, especially improper placarding and failure to provide telephone contact
	Facilitate the filing of complaints by emergency responders who discover violations at incidents

Problem	*Proposal*
Placards, shipping papers, or other information sources are obscured, destroyed, or inaccessible because of a crash or fire or threat of fire, explosion, or toxic exposure	Improve placard visibility through the use of retroreflective materials and other means Evaluate new materials for prolonging the fire resistance of placards
Information sources are in compliance with regulations and accessible, but they fail to efficiently convey important information to responders	Ensure that shipping papers and placards on vehicles carrying mixed loads are comprehensible to emergency responders by (*a*) requiring a summary manifest listing critical information about each hazardous shipment on board a vehicle, (*b*) requiring carriers to provide 24-hr telephone contact to a person with access to vehicle cargo information, (*c*) replacing the Dangerous placard with a more specific message, and (*d*) changing the minimum quantities requiring placarding Analyze the use of CHEMTREC and the National Response Center by local emergency responders to determine whether needed services are being provided and develop more effective referral services Coordinate material identification requirements among DOT, EPA, and the Occupational Safety and Health Administration to ensure that they are consistent and understood by responders; in particular, eliminate ambiguities concerning identification of hazardous contents of trailers or railcars being used as storage Develop a standardized material data sheet and require that it accompany shipping papers for certain hazardous materials
Information is insufficient because the material or shipment is exempt from some federal hazardous materials transportation regulations	Encourage industry efforts to adopt uniform tank trailer numbering

Problem	*Proposal*
Vehicle operator is unprepared to provide information	Ensure that training of shipper and carrier personnel covers communication with local emergency responders
Responders fail to obtain or use available information	Expand federal resources and technical assistance for training of responders in the skills of hazard identification and interpretation Develop a hazardous materials identification training curriculum

DOT and the U.S. Fire Administration should jointly conduct a study of costs and means of organizing and delivering training to hazardous materials emergency responders and enforcement officers. Participation of state and local emergency responders in the study must be ensured. Also, participation of EPA and the National Institute of Environmental Health Sciences would be valuable. Training will be essential to the success of any attempts to improve the emergency response information system, including those that would use automation. Lack of training is a factor in most of the information problems that arise in hazardous materials incidents. The study should be undertaken with the oversight of Congress, and its product should be a report to Congress on national requirements and the federal role in training.

Original National Central Reporting System Proposal

The government should not attempt to implement a system such as the originally proposed national central reporting system, that is, one entailing immediate and universal application of a requirement for shipper or carrier real-time filing of vehicle contents information in a central data base. There is no sound basis for defining performance criteria for information to be provided and threshold reliability needed in such a system; there would be no opportunity to allow ongoing evaluation to guide implementation, as a phased implementation would allow; and the system would not be designed to make maximum use of existing shipper, carrier, and responder capabilities. Also, the original national central reporting system proposal is not aimed at the most serious failures of the existing system. The incident case study results tentatively indicate that the failure the proposal was primarily intended to correct—incidents in which papers or placards are inac-

cessible because of a crash or fire—is only one category of failure, and not the most frequent category, under the existing system.

Because of these shortcomings, the originally proposed system would be unlikely to function as intended or to produce benefits sufficient to justify its costs. Information technology can make important contributions to emergency response, but this potential is most likely to be attained through the phased approach recommended earlier.

STATEMENT OF J. RANDY KELLEY, DIVISION VICE PRESIDENT

SONOCO PRODUCTS COMPANY - SEMIBULK PACKAGING DIVISION

BEFORE THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION'S SUBCOMMITTEE ON SURFACE TRANSPORTATION

, 1993

INTRODUCTION

My name is Randy Kelley and I am the Division Vice President of Sonoco Products Company's Semibulk Packaging Division which is a major manufacturer of fibre drums. I have Gordon W. Rousseau with me today as Gordon is a nationally recognized hazardous materials transportation expert. I appreciate the opportunity to submit my statement to the Committee on Public Works and Transportation's Subcommittee on Surface Transportation to explain how the Department of Transportation's ("DOT") Research and Special Programs Administration's ("RSPA") new rule ("HM-181"), and decision to deny an exemption in accordance with Section 7 of the Hazardous Materials Transportation Act ("HMTA"), will affect Sonoco Products Company and the entire domestic fibre drum industry. In short, RSPA's actions will eliminate the use of a safety-proven, environmentally responsible, and cost-effective package for the domestic transport of certain hazardous materials and a unique American technology, and will severely damage the domestic industry.

BACKGROUND

In a November 1987 proposed rule, RSPA comprehensively revised the existing hazardous materials regulations with respect to hazardous materials communications, classification and packaging requirements. RSPA's proposed rule -- HM-181 -- was based upon the

United Nations Recommendations On The Transport Of Dangerous Goods ("UN Recommendations") and RSPA's own initiative. Because HM-181 completely revises the existing regulations that have been in place for more than 50 years, it is not fully effective until October 1, 1996. Part of RSPA's stated reasoning for promulgating HM-181 was to "enhance safety through better classification in packaging". In brief, HM-181 completely revised the existing regulations for packaging which were based upon design specifications by adopting the performance-oriented packaging standards set forth in the UN Recommendations. In promulgating the proposed rule, RSPA stated its belief that the shift to a performance-based packaging system would reduce the need for exemptions which Congress specifically authorized DOT to issue under Section 107 of the HMTA.

In response to HM-181 as proposed, the fibre drum industry (including Sonoco) submitted comments to RSPA urging that certain changes be made to the regulations to allow the continued use of open-head fibre drums -- a packaging used by many different industries in the United States and one that has proven to be extremely safe and reliable (fibre drums have a 99.99 percent plus safety record). Because RSPA only incorporated part of the fibre drum industry's requested revisions to proposed HM-181 in the 1990 final rule, the fibre drum industry (as represented by the Fibre Drum Technical Council) submitted a Section 107 exemption application to RSPA in June 1992 that would authorize use of these drums (mostly for certain flammable and corrosive liquids) in domestic commerce only.

In this regard, it is important to note here that RSPA did authorize numerous exceptions to the 1990 final rule for various industries and companies that submitted comments in response to the proposed rule. A review of these authorized exceptions in the 1990 final rule, and the December 1991 corrections document, demonstrates that RSPA granted these exceptions based upon the following factors: the impact of HM-181 upon domestic markets, the cost of compliance to the industry or company requesting the exceptions (such as the T-Zone test for the steel drum industry), and data provided by commentors as to the existing domestic transportation practices and the relevant safety of such practices. By way of example, RSPA decided to classify anhydrous ammonia as a "non-flammable gas" for purposes of domestic shipments notwithstanding the fact that anhydrous ammonia is classified as a "poison gas" under HM-181 for international shipments. RSPA also agreed to allow salvage drums to be tested at a different performance level than that required by the international standards based upon the existing manner in which the drums are used. Finally, RSPA also allowed the steel drum industry to continue to use the T-zone test as a performance-based standard notwithstanding the fact that its use is questionable as an acceptable "leakproofness" test under the international standards. As noted above, in granting these exceptions and others, RSPA relied primarily upon existing safety data, shipping experience, and costs of compliance.

Although the domestic fibre drum industry provided data to RSPA as to the outstanding safety record of fibre drums and the excellent shipping experience associated with use of these drums by various domestic industries, RSPA authorized only very limited exceptions in the final rules to allow for their continued use (effectively eliminating the use of open-head fibre drums by customers). Accordingly, the fibre drum industry (through the auspices of the Fibre Drum Technical Council) submitted the exemption application to RSPA. The exemption application set forth various performance standards that open-head fibre drums would be required to pass for authorization -- tests which have been used over the years by the industry, and as the safety record demonstrates, accurately predict the safety of these drums. Nevertheless, the exemption application was denied by RSPA in September 1992 on the grounds that the drums cannot meet the HM-181 performance standards (drop and pressurization tests) required by the new rules.

In discussing RSPA's failure to provide the needed exceptions in the final rule or an exemption for the continued use of fibre drums, it is important to know that open-head fibre drums have been in use under the existing regulations and the technology has been evolving since the early 1970's. In fact, fibre drums authorized under the existing pre-HM-181 regulations are in use today. In 1972, when RSPA's regulations were expanded to cover several corrosive materials which were transported in fibre drums but which were unregulated at that time, RSPA proposed regulations

that would have removed the authorization for fibre drums. At that time, the fibre drum industry presented its excellent safety record to the Agency and RSPA announced in the Federal Register that there was no indication that a safety problem existed with open-head fibre drums and that it would continue authorization for these fibre drums. Over 20 years later, without any finding of a safety issue, RSPA has now effectively eliminated the use of open-head fibre drums in issuing HM-181 without granting a statutorily authorized exemption to the fibre drum industry. Its primary explanation has been that these drums do not fit within the new international system.

It is important that Congress understand that HM-181 is based upon an artificially and theoretically established benchmark evaluation system that ignores decades of proven safe experience in the transportation of chemicals. These new standards are not "in-use", experienced-based standards but are rather, theoretical benchmarks used to evaluate the suitability of packaging by the government. At no time has any study or evidence been presented by the international standards coordinators or DOT that shows a correlation between actual experience and the projected success of the packaging under the new theoretical test criteria set forth in HM-181. In short, while open-head fibre drums in use today do not meet two of the performance tests (which remain unproven) more than 20 years of shipping experience demonstrates that the package is safe (protection of the public and the environment), reliable (desirable by its characteristics as a substitute for other

competitive packaging), and performance-proven (by RSPA's own incident reporting data covering a 12-year period). In fact, this fibre drum's incident rate is lower than other approved competitive packaging.

INTERNATIONAL STANDARDS

In RSPA's 1990 final rule and the 1991 corrections document, RSPA stated that one of its reasons for adopting HM-181 was to ensure that domestic transportation standards would not be a barrier to trade, and that this policy was consistent with the 1990 amendments to the HMTA and the Trade Agreements Act of 1979. As Congress knows, Section 105(e) of the 1990 amendments authorized the Secretary of DOT to participate in international forums and directed the Secretary of DOT to recommend standards and requirements for the transport of hazardous materials in international commerce. But Congress did not require DOT to issue standards identical to those adopted by an international body if the Secretary determined that the standards were unnecessary or unsafe. Likewise, the Trade Agreements Act of 1979 requires federal agencies to develop standards based upon international standards only if appropriate; however, the Act also requires federal agencies to consider legitimate domestic objectives when necessary in adopting federal standards.

Although RSPA has an obligation to consider international standards in revising the federal hazardous materials regulations,

RSPA was not mandated to adopt identical standards, and moreover, existing law authorized RSPA to consider domestic objectives and concerns as well -- such as the impact that HM-181 will have and has had on the domestic fibre drum industry. Contrary to RSPA's stated rationale for the adoption of HM-181 -- Congress did not require RSPA to adopt international standards if they are unnecessary or unsafe.

In this regard, Congress should note the fact that the UN Recommendations, after which HM-181 is modeled, are not completely uniform nor do they impose an absolute mandate. Nor have the standards been in use for more than a few years; there is, in fact, no established experience with these standards by any country. In fact, the UN Recommendations were never intended to preclude domestic authorities (such as the U.S. DOT) from granting exceptions. Specifically, Paragraph 9.1.8 (as set forth below) of Chapter 9 of the UN Recommendations was adopted by the UN in response to participating countries' concerns that certain types of packaging would be eliminated since they did not meet the Chapter 9 performance tests which have no established experience record (for example, the Europeans wanted an exception for use of tin plate and light-metal receptacles). In response to these countries' concerns, the UN adopted Paragraph 9.1.8 to recognize that different regions and countries may wish to adopt exceptions to the UN Recommendations for substances or packages based upon individual (domestic) modes of transportation.

> It is recognized that certain substances * * * are transported in packagings which do not meet all the performance tests in this Chapter. It may be appropriate for provisions to be made for such substances and/or packagings in relation to individual modes of transport on a regional basis.

The United States specifically supported and encouraged adoption of Paragraph 9.1.8 to recognize regional trends and practices associated with the transportation of hazardous materials. Yet, RSPA did not consider this provision in evaluating the fibre drum industry's exemption application. In contrast, Canada (a country that subscribes to the UN Recommendations) relied upon Paragraph 9.1.8 in deciding to authorize the continued domestic use of all of its former packaging **(including fibre drums)** noting that there is no evidence that there was a safety problem but that there was evidence that adherence solely to the UN Recommendations could harm Canadian industry by unnecessarily removing packaging from the marketplace that did not have a safety problem. In this regard, Canada stated in its counterpart to our Federal Register:

> Allowing only UN performance-oriented packaging would also reject the wealth of accumulated experience reflected in existing packagings, both those found in the Red Book [Canada's counterpart for rail to DOT

hazardous materials regulations] and those developed over the years by individual companies.

As distinguished from Canada, RSPA has decided not to authorize the continued use of open-head fibre drums, stating in the 1991 corrections document "that single fibre drums have not been viewed internationally as suitable for transporting liquid hazardous materials because of the high-water absorption properties of fibre packaging materials". RSPA's reasoning disregards a very critical fact: the domestic fibre drum industry uses a technology for the packaging of liquids that has been uniquely developed in the United States and which has been successfully and safely used in this country for the past 30 years by the chemical industry. This domestic technology has not been used by other countries only because they decided not to pay the costs associated with acquiring this American technology. American manufacturing capabilities and raw materials are costly to duplicate elsewhere, and therefore, there has been no interest in licensing this advanced technology by other countries because of economics.

OUTSTANDING SAFETY RECORD OF FIBRE DRUM INDUSTRY

When RSPA denied the domestic fibre drum industry's exemption application, it stated that the exemption request failed to "demonstrate that the fibre drums proposed for use in the shipment of various hazardous materials [would] provide a level of

safety at least equal to that established in the regulations adopted under HM-181." The level of safety to which RSPA refers is the new performance standards required by HM-181. As I have explained, RSPA's conclusion ignores important considerations such as the fibre drum industry's 30 years of shipping experience and the outstanding safety record (99.99 percent safe) associated with currently authorized fibre drums. This safety record is based upon company records and RSPA's own records (Hazardous Materials Incident Reporting System) which shows that from 1980 to 1991, over 13 million fibre drums were built for use in shipping liquid hazardous materials for which the exemption was requested. With respect to the 13 million drums, only 455 incident reports indicating a failure of some type were filed with RSPA during this 12-year period. Thus, the success rate that can be attributed to shipments of hazardous materials in fibre drums is virtually 100 percent which is equivalent to or better than the success rate of competitive packaging.

The domestic fibre drum industry's request to DOT to authorize an exception and/or an exemption to HM-181 for continued authorization of open-head fibre drums after October 1, 1996, was based upon the 30 years shipping experience plus the outstanding safety record discussed above. In contrast, there is no history of shipping experience in this country, or internationally, associated with the new HM-181 performance standards. These new performance standards have not been tested nor proven in the real-life transportation world -- there is an obvious lack of experience with

these standards and they do not, and cannot, in any regulatory context, represent an established existing level of safety.

Even RSPA has acknowledged the satisfactory safety record associated with fibre drums that are currently authorized (pre-HM-181 authorized drums). For example, in denying the industry's exemption application, RSPA did not base its decision upon the existing safety record nor cite safety as a factor for the denial. Additionally, RSPA explained in the 1990 final rule that certain standards required by HM-181 would not become effective for a five-year period unless safety considerations warranted a shorter implementation period. Since the new performance standards prescribed for fibre drums do not become effective until October 1, 1996, RSPA conceded that there are no safety-related reasons to support an early phase-out of currently authorized fibre drums.

Finally, it is important that Congress heed RSPA's public acknowledgment that the new performance standards only **simulate** the transportation environment -- that the new standards are not based upon a knowledge of how packaging meeting the standards will perform in the real-world transportation environment. Notwithstanding the Agency's statutory obligation to ensure safety in the transportation of hazardous materials in the real world, RSPA has concurrently decided to ignore the excellent safety record of the fibre drum industry which is based upon **actual** shipping experience and use in the real-world transportation environment.

Given RSPA's inconsistent behavior, Congress must seriously consider the fact that the new performance-based system set forth in HM-181 is being introduced nationwide by RSPA without any evaluation or assessment to determine its feasibility and adequacy. Packaging manufacturers are not required to change over to the new system before October 1, 1994, and consequently they are still manufacturing the old packaging. As of October 1, 1996 we will have a completely new packaging system which many persons, as the public comments to HM-181 illustrate, know is yet unproven and more expensive.

The safety of the open-head fibre drum, and the excellent shipping experience associated with its use, is further attested to by the numerous customers of the fibre drum industry which submitted comments to RSPA documenting the excellent shipping experience that these companies have had with the transportation of materials in fibre drums. These companies include Olin Corporation, Chevron Chemical Company, Shell Oil Company, Borden Inc., OTV Distributors, Inc., USC (division of Hydrate Chemical, Co.), Golden West Distribution & Warehousing, WCS Corporation, Cameron-Yakima, Inc., J.F. Shelton, Econotek, Inc., Jonco Chemical Co., Inc., Ally Industries, Independent Packaging Inc., Sybron Chemicals Inc., The Virkler Company, Cooper Chemical Company, Specialty Polymers, Inc., and General Chemical Corp., and Neste (formerly, Co-Plas, Inc.) (many of which are Fortune 500 companies). These companies urged RSPA to reconsider its decision to disallow continued use of open-head fibre drums for the shipment

of currently authorized hazardous materials based upon their proven performance in service.

THE IMPACT OF RSPA'S DECISION ON DOMESTIC MARKETS AND COMPETITION

Subsequent to the time that RSPA proposed HM-181, the fibre drum industry contacted the Agency, by way of comments and petitions for reconsideration, to stress the fact that fibre drums have been successfully shipped during the 30 plus years without any safety problems. As noted, RSPA did not cite a safety difficulty or anticipated new risks associated with the use of fibre drums. RSPA based its position upon the cancellation of the packaging on the alleged upgrading of "package integrity" and consistency with international standards. RSPA did not (and cannot) offer any supporting data to show there was a deficiency with the currently authorized (pre-HM-181) domestic fibre drum packaging. Moreover, RSPA cannot offer any data to show that the new international standards provide safer packaging.

In this context, Congress should know that the international standards, which will become the new rules effective in 1996, were developed mainly by European governments (members of the UN Committee responsible include a majority of such governments). Europe has never used the fibre drum technology at issue here for packaging of liquids and instead has largely relied upon steel drums. Europeans, upon being confronted several years ago with the American fibre-based technology, rejected it as too

costly in their society. In the packaging industry, paper costs compared to steel are much higher in Europe than in the United States. As a result, a natural market situation has evolved whereby the American industry relied heavily on paper as an important, competitive, cost-effective, and equally viable packaging alternative for its chemical products. The American fibre drum industry developed and grew in this free, open, and competitive marketplace.

Given the lack of interest shown by other countries to this unique American technology, and in adopting international standards that knowingly ignore this technology, the "new international system" as adopted by RSPA is obviously cutting short successful American economic development. RSPA's decision will deny American industry technical advantages in production that are available by choice in the United States but are not available by choice in other parts of the world. In addition, the elimination of these fibre drums will cost American industry millions of dollars by requiring customers of these fibre drums to use more expensive, alternative drums and in resulting plant consolidations and closings that will occur throughout the domestic fibre drum industry.

In recognition that these new technology drums are not manufactured in Europe, Congress should further note that the American fibre drum industry is not asking that its containers be recognized in Europe. Rather, it is willing to let the marketplace

decide that issue. In recognition of RSPA's concerns with international uniformity, the industry proposed a specific restriction in its exemption that should have been acceptable to RSPA given the safety record of fibre drums -- it proposed to limit the shipment of materials in fibre drums to domestic markets. Specifically, the fibre drum industry is only asking RSPA and Congress to compete in the United States given the excellent experience record in shipping hazardous materials and given RSPA's lack of data and information to demonstrate otherwise. Recognition of a proven technology during more than 30 years of satisfactory experience should not be rejected without serious careful consideration of the facts.

In sum, RSPA's actions in adopting the international standards and in denying the domestic fibre drum industry an exemption for continued authorization will result in serious harm to an American industry without any benefits. RSPA's reason for this action seems inexplicable especially if it is solely for the purpose of uniformity. By itself, uniformity is not a reason to close plants, lay off people, and cause business hardship to the many companies that use and manufacture fibre drums.

ENVIRONMENTAL REASONS THAT SUPPORT CONTINUED DOMESTIC USE OF THE FIBRE DRUM

In addition to the excellent safety record and shipping experience of the fibre drum industry, and the significant economic impact that HM-181 would have upon the domestic economy, another

compelling reason that supports continued domestic use of the fibre drum is the fact that these drums are more environmentally responsible than other types of packaging. Fibre drums have become the preferred option for many customers who formerly used metal and plastic drums. Paper from fibre drums is for the most part recycled. In fact, Sonoco (which is the largest manufacturer of fibre drums in the United States and a major recycler) has developed a complete recycling system (with four mobile and two stationary units in place and more planned) in which empty drums are collected and metal components are separated from fibre. Fibre elements are then shredded for use in manufacturing industrial grade fiberboard. Two additional fibre drum manufacturers are also developing similar recycling capacity. As Congress knows, the paper industry is the largest recycler among industries in the United States. Other types of packaging, such as steel drums, are reconditioned in a more limited manner, and have been disposed of at sites that have been or eventually will be placed on EPA's National Priorities List for Superfund remediation.

Domestic use of the fibre drum is also consistent with EPA's primary goal in the management of hazardous waste which is to eliminate the generation of such wastes by promoting all recycling efforts since recycling more effectively reduces risks to humans and the environment, conserves energy and slows the depletion of nonrenewable natural resources. While some steel drums are recycled to steel-making facilities, many are land-disposed when they are discarded whereas fibre drums may be safely incinerated

thereby reducing the amount of landfill space which is growing scarce.

The steel drum industry is likely to contest the fibre drum industry's statement that fibre drums are more environmental responsible. In this context, it is important for Congress to remember that the steel drum industry opposed the exemption application submitted by the fibre drum industry (the opposition was not based upon safety reasons), and that the steel drum industry is the competitor that stands to gain the most from the elimination of fibre drums by RSPA.

LEGISLATION

Legislation has been drafted by Sonoco Products Company to ensure the continuation of the fibre drum industry -- a unique American technology which will suffer significant effects if RSPA is allowed to implement HM-181 as is, or without the issuance of a Section 107 exemption to the fibre drum industry for domestic commerce only. By way of example, the impact upon Sonoco will be at least a $15 million dollar loss as the specific impact upon our facilities range from 10 percent up to 33 percent. Plants will be consolidated and employees will be laid off.

In an effort to inject objectivity into RSPA's rulemaking process and to ensure safety in transportation, the proposed legislation sets forth criteria that the Secretary of DOT must

consider when promulgating regulations for packaging that will be used in domestic transportation only (the legislation tolls the implementation of packaging requirements set forth in HM-181 until the Secretary issues such regulations.) Additionally, the legislation amends Section 107 of the HMTA to require the Secretary to consider the same criteria when issuing or renewing exemptions for packaging that will be used for the transport of hazardous materials in domestic commerce. Sonoco seeks the support of this Subcommittee and the full Committee on Public Works and Transportation in advancing this legislation which is absolutely necessary if the American fibre drum industry is not to be severally impacted.

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WHAT PRICE UNIFORMITY?

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COMMENTARY

WHAT PRICE UNIFORMITY?

By Stanley Hoffman

DOT's rejection of the Fibre Drum Technical Council's request for exemption from the package testing provisions of HM-181 is perhaps one of the most substantive decisions it will make in the HM-181 transitional era. The author here reviews and comments on that decision, arguing that if the problem with granting the exemption request is administrative, its resolution should not lie in the imposition of unnecessary substantive constraints on business or the denial of economic advantages to American industry.

Though past may be prologue, history also demonstrates that experience is not an infallible guide to the future. Thus, until Bhopal, experience alone afforded little reason to suspect the awesome destructive potential of methyl isocyanate. Similarly, until the Exxon Valdez, history underestimated the magnitude of environmental disaster that could result from a single incident.

Nevertheless, both common sense and common experience suggest that we disregard the past only at our peril. For DOT, therefore, the perennial question in regulating hazmat transportation safety is how much weight should be given to experience and how much to other factors? How important are the lessons of experience in assessing "the risks to life and property ... inherent in the transportation of hazardous materials"?[1]

Because these are difficult questions with uncertain answers, regulatory authorities are permitted to exercise broad discretion in the performance of their regulatory duties. Such discretion, however, is not without limit and the law prohibits its exercise in arbitrary or capricious fashion, or in a manner contrary to statute.

A recent decision by DOT raises serious questions about the limits of discretion with respect to the issuance or denial of exemptions from the hazardous materials regulations. By law, DOT is authorized to grant such exemptions only if the level of safety that will then exist is at least equal to the safety level otherwise required.[2] However, in the event there is no existing level of safety "established," exemptions must be consistent with the public interest and the Congressional policy set forth in the Hazardous Materials Transportation Act.

But what is an *established* level of safety? Is it the level demonstrated by substantial experience under a particular rule, regulation or packaging specification? Or, alternatively, is a level of safety established by the mere adoption of a regulation, even in the absence of sufficient experience to validate the expected results?

In a recent denial of an important exemption application[3], DOT appears to have embraced the latter interpretation. The application, filed on June 8, 1992 by the Fibre Drum Technical Council (FDTC), requested permission for continued domestic use of certain open-head fibre drums for the transportation of a limited group of hazardous liquids and solids assigned to Packing Groups II and III under DOT Docket HM-181. Under pre-HM 181 regulations, as continued in effect during the HM 181 transition period, such drums are currently authorized for domestic rail and highway movement.

Although these drums now are not required to meet any specific DOT packaging specifications, FDTC proposed to require compliance with both the general packaging requirements of HM-181 (49 CFR §§ 173.24 and 173.24a) and HM-181 stacking and vibration testing. In addition, all drums would be subjected to "a rigorous industry quality control system," including tests and other requirements pertaining to compatibility, integrity of package joints, liner leakage and impact, weatherproofing, and materials of construction.

FDTC readily acknowledged that the fibre drums could not meet the leakproofness and drop tests required by HM-181 performance standards. FDTC also argued, however, that the drum specifications which it proposed are in many respects "more detailed and rigorous" than HM-181 requirements. Moreover, said FDTC, experience has amply demonstrated that such drums could be safely used in transporting hazardous materials.

According to FDTC, more than thirteen million fibre drums were manufactured and used to transport the involved hazardous materials during the past twelve years. In that period, there were only four hundred fifty-five known failures, a success rate approaching one hundred percent. While such statistics are not always reliable, even if half that number of drums were actually used, and even if twice that many failures had actually occurred, the failure rate still would be minuscule.

No matter. DOT's response to the FDTC application virtually ignored the evidence of experience. Instead, the application was denied because, said DOT, the applicant failed to demonstrate that the proposed exemption would provide a level of safety at least equal "to that established in the regulations adopted under Docket HM-181."

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In DOT's view, therefore, the mere adoption of the HM-181 standards has already established a new level of safety, despite the absence of substantial experience under such standards.

In short, DOT's denial of the FDTC application constitutes a clear declaration that no pre-HM 181 packagings will be "grandfathered" if the packagings cannot meet the performance standards prescribed in that docket, even if experience has clearly demonstrated that such packagings are safe. And, of course, if a packaging meets the HM-181 performance standards, no exemption will be required. In consequence, the exemption statute would be effectively nullified, at least with respect to packagings authorized prior to Docket HM-181.

DOT's denial explicitly rejected the elements of the proposed quality control standard and, in so doing, confirmed its position that the mere adoption of HM-181, and not experience under the new rules, has "established" a new level of safety. The proposed quality control standard, DOT concluded, would not result in a level of safety equivalent even to the "minimal performance standards imposed by HM-181."[4] Significantly, DOT added that the HM-181 standards "represent the virtual culmination of an effort which began in 1968."

It is widely recognized that one of DOT's primary incentives for adopting HM-181 was the expectation that the number of packaging exemptions would be substantially reduced. Indeed, during the course of its long effort to establish performance standards, DOT has repeatedly warned that it "does not plan to allow exemptions involving packaging specifications replaced by performance standards to remain in effect indefinitely."[5] In addition, DOT notified exemption holders that some exemption packagings "may not provide a level of safety equivalent to that provided under the provisions of HM-181 and, therefore, may not be eligible for continued use after HM-181 becomes effective."

We have come full circle, therefore, to the question raised at the outset of this essay: Is a level of safety "established" merely by publication of a regulatory standard, or only after that standard has been tested by experience? The question is important because DOT may have applied an erroneous standard in deciding the FDTC application. If, for example, a level of safety is "established" only after a regulation is tested by experience, the "equivalence" standard would not apply with respect to exemptions from HM-181. On the other hand, if the "public interest and policy" standard were applicable, DOT might be required to give additional consideration to pre-HM-181 experience, and possibly even to economic factors.

It is conceivable, therefore, that DOT's denial could be found arbitrary or capricious in its disregard of the strong evidence of actual shipping experience, and in its exclusive reliance on the relatively limited experience with performance testing. However, if the mere adoption of a new rule has "established" a new level of safety, *every* application for relief from the new rule would necessarily constitute a situation involving an established level of safety. Yet the exemption statute clearly contemplates the absence of such a level of safety in at least some cases.

As of this writing, it seems likely that FDTC will appeal the denial by the Associate Administrator to the (acting) Administrator of the Research and Special Programs Administration. If such an administrative appeal is unsuccessful, FDTC may then seek judicial review of DOT's decision.

Should that occur, it is likely that the Court would have to decide whether DOT's apparent failure to give any weight to the evidence of experience is arbitrary and, if so, what value should be attributed to such evidence. Moreover, the Court may consider whether DOT applied the right standard in seeking equivalence with an "established" level of safety, instead of applying the "public interest and policy" standard which is to be invoked when no level of safety has been established.

DOT's denial of the FDTC exemption application does not clearly declare that *any* deviation from HM-181 standards is sufficient to justify rejection of any request for exemption. However, to the extent that such a position is implicit in the denial, DOT may face some difficult questions regarding its prior approval of exceptions from international standards, such as those classifying anhydrous ammonia as other than poison gas or authorizing non-specification packaging for combustible liquids. If those exceptions are justified by domestic experience, why is such experience a less reliable guide in connection with exemptions?

At least two organizations, representing FDTC's competitors, opposed the exemption application. Both the Association of Container Reconditioners (formerly NABADA) and the Steel Shipping Container Institute urged DOT to reject the application or consider the matter in a separate rulemaking. DOT's denial is apparently intended to end the matter there, and seems to draw a clear line for the future: any deviation from HM-181 packaging standards will be denied regardless of experience or related factors.

A judicial challenge, therefore, may help clear the air and answer some fundamental questions regarding the seemingly rigid and inflexible position evidently taken by DOT. That position, it appears, may be inconsistent with DOT's own prior deviations from HM-181 standards, as well as similar deviations by other countries, such as Canada, with respect to the internal commerce of those countries. Further DOT variations through the exemption process, therefore, would not impair

Continued on page 13

either the integrity of international standards or of DOT itself. To the extent that experience may justify domestic exceptions, any resulting economic advantage should not be sacrificed to questionable principles of international uniformity.

DOT's reluctance to encourage or invite continued reliance on the exemption process is understandable in view of the substantial administrative burden associated with that process. And, of course, it is entirely likely that approval of the FDTC application would result in a proliferation of similar applications for other pre-HM 181 packagings. However, if indeed the problem is administrative, its resolution should not lie in the imposition of unnecessary substantive constraints on business or the denial of economic advantages to American industry. ◆

1. Hazardous Materials Transportation Act, §102 (49 U.S.C. 1801).

2. 49 U.S.C. 1806(a), as amended by Pub. L. 101-615, §9, November 16, 1990.

3. Letter dated January 12, 1993 from Alan I. Roberts, Associate Administrator for Hazardous Materials Safety, to Fibre Drum Technical Council, Washington, D.C., denying exemption application 10836-N.

4. Presumably, DOT intended to refer to the "minimum requirements" of HM-181, thereby indicating that such requirements could be voluntarily exceeded, rather than suggesting that the HM-181 standards are "minimal," or less than safe.

5. Federal Register, December 21, 1990.

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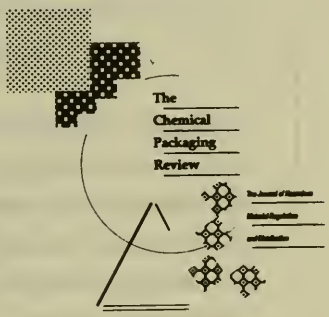

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

JUNE 8, 1993
WASHINGTON, DC

Statement of the

AMERICAN TRUCKING ASSOCIATIONS

On

REAUTHORIZATION OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT

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I am Timothy Lynch, Vice President, Legislative Affairs with the American Trucking Associations. I welcome the opportunity to present testimony concerning the trucking industry's perspectives on the re-authorization of the Hazardous Materials Transportation Act.

ATA, the nation's trade association of the trucking industry, represents every type and class of motor carrier in our nation, for-hire and private --- regulated and exempt--through its 51 affiliated state trucking associations, organizations, conferences, and several thousand individual motor carriers.

The motor carrier industry is not a single industry---rather, it is a collection of industries, from truckload to less-than-truckload, from general freight carriers to specialized carriers such as munitions transporters, from coast-to-coast delivery to local pick-up and delivery service. The trucking industry is comprised of more than 260,000 firms and accounts for 77 percent of all freight transportation revenues in this country. The public and the American economy depend on truck transportation to provide the goods, services and materials that move America.

This transportation includes the transportation of hazardous materials. " Hazardous Material" is a term of art and includes a broad spectrum of products from materials the public would think of as hazardous, such as gasoline to consumer products, such as lighter fluid and charcoal. The safe transportation of hazardous materials is vital to the public safety and economy of this country. We fully support this legislation that reauthorizes the Hazardous Materials Transportation Act. The Act provides for a strong federal role in governing the regulatory aspects of the transportation of hazardous materials. We strongly support continued Federal funding for these Federal programs.

In previous testimony, we have supported the concept that the transportation policy of this country needs strong Federal leadership; this is especially true for the transportation of hazardous materials.

We would like to take this opportunity to point out a number of areas of special concern to the motor carrier industry regarding the safe and efficient movement of hazardous materials the Subcommittee should consider as it reauthorizes the program.

Issue No.1 : Registration and fees.

Discussion:

Based on the 1990 amendment to the Hazardous Materials Transportation Act, motor carriers and shippers engaged in the transportation of hazardous materials are required to register with the Department of Transportation. The registration and fee program is now in place, with registrants paying an annual fee of three hundred dollars. The monies generated by this registration program are used to fund a public sector grant program created to increase the effectiveness of state and local hazardous materials emergency and planning programs. Title 49 United States Code 1811 prohibits imposition by the states of hazardous transportation fees which are not "equitable" or which are not used for purposes related to the transportation of hazardous materials. Unfortunately, this has not deterred the states from imposing state fees on motor carriers transporting hazardous materials, and some of these fees are becoming a real concern to the carriers. The proliferation of state and local hazardous material fees is a growing and serious problem for the trucking industry.

Recommendation:

We urge this Subcommittee to review carefully the growth of duplicative hazardous material fees by the states. We further suggest that the Subcommittee give consideration to precluding states from assessing fees as a condition for accepting Federal funds.

Issue No. 2 : Tracking of hazardous material movements.

Discussion:

The motor carrier industry was pleased to see the National Academy of Science's study recommended against the establishment of a national database for the tracking of hazardous materials.

With the tens of thousands of hazardous materials shipments moving every day without incident, less than one half of one percent of all hazardous material shipments are involved in incidents requiring emergency response, and most of these do not create a problem of hazardous material identification. We agree with the National Academy of Science conclusion that a national central reporting system as originally proposed "would be unlikely to function as intended or to produce benefits sufficient to justify its costs." Any future pilot programs or studies must be initiated with caution.

Recommendation:

This Subcommittee should accept the recommendation of the National Academy of Science's study concerning a national computer tracking system and continue to work with emergency responders, carriers and shippers to ensure that

improvements are made to existing systems for providing timely and accurate information to emergency responders at hazardous materials transportation incidents.

Issue No. 3: Separation and segregation of hazardous materials in transit

Discussion:

The Research and Special Programs Administration has issued new regulations for the segregation for land transportation of hazardous materials which are scheduled for implementation on October 1, 1993. The proposed new rules will increase incompatible combinations without any safety justification from DOT, and create unnecessary delays in transportation with associated costs of $118 million per year. For example, 13 new restrictions will no longer allow hazardous materials to move in less-than-truckload movements with other hazardous materials. A newly imposed restriction is that of corrosive liquids and flammable gas. These products have been transported frequently in the same vehicle without restriction in a safe and incident free manner. These rules were published in December of 1990 and we have been unable to get the Department of Transportation to act on our concerns.

Recommendation:

We urge the Subcommittee to encourage the Department of Transportation to act on our four-month old petition to modify the separation and segregation rules.

Issue No. 4: Uniformity.

Discussion:

Since the early 1980's, state and local governments have become increasingly concerned about the transportation of hazardous materials. Much of this has been based on perception rather than fact, or a lack of familiarity of the state or locality with the federal program.

Regardless of the particular form a state or local law might take, or the good intentions of a state or locality to increase the safety of its own citizens, to the extent that such unique state or local laws may diminish the risk in one area, it has often occurred at the expense of the citizens of other states or localities. For example, under Federal law as it existed prior to the 1990 amendments, one jurisdiction required trucks to be painted special colors based on the hazardous materials being transported. This marking system was not nationally uniform and interfered with interstate commerce.

Recommendation:

The re-authorization now being considered should not reduce the uniformity provisions now contained in current law.

In closing, I wish to assure you of ATA's continued commitment to the safe transportation of hazardous materials on our nation's highways. We offer our support for passage of the reauthorization of the Hazardous Material Transportation Act. I will be pleased to answer any questions.

STATEMENT OF ROSE A. MCMURRAY, ACTING ADMINISTRATOR

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

JUNE 8, 1993

Good morning Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to update you on the Department of Transportation's ongoing efforts to improve the safety of transporting hazardous materials. With me today is Mr. Alan Roberts, the Associate Administrator for Hazardous Materials Safety, who will respond to your more technical questions. I especially want to address our progress in implementing the regulatory provisions under the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990. I would also like to submit, for the record, a detailed summary of RSPA's implementation of the HMTUSA provisions. I hope this information will be useful to you in your efforts to reauthorize the HMTA.

As you know, the HMTUSA was the most comprehensive change to hazardous materials legislation since the HMTA was passed in 1974. HMTUSA was a convergence of ideas, driven by unprecedented coordination and cooperation among the states and local

governments, industry, and Federal interests. It assigned our agency, the Research and Special Programs Administration (RSPA), major new responsibilities. RSPA has made significant progress in carrying out the Act's statutory obligations.

REGISTRATION

One of the significant new programs under HMTUSA was the "Hazardous Materials Transportation Registration and Fee Assessment Program" which was initiated in September 1992 after an extensive rulemaking effort. The rule requires persons who transport, or cause to be transported, certain hazardous materials to file registration statements with RSPA and pay an annual fee of $300 to fund an emergency preparedness grants program. To date, we have collected approximately $11 million from 36,000 registrants, including re-registrants from the 1992-1993 registration year.

In conjunction with the publication of the final rule, RSPA developed an extensive outreach and compliance program to advise shippers and carriers of the new registration requirements through information and education. Over 200,000 informational brochures and registration forms were mailed out for the initial registration period. For the 1993-94 registration year (July 1, 1993 through June 30, 1994), in an effort to seek out those entities which have not yet registered with us, we are using additional Federal data sources, together with national industry and trade associations, to identify potential registrants.

This year however, a new element is being added to the registration program. While we will continue our aggressive outreach effort, greater emphasis is being placed on enforcement at the Federal, state and local levels, which should result in significantly higher registration. RSPA is working closely with the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA). Today is the first day of the FHWA's ROADCHECK '93, a 3-day intensive national program to identify whether motor carriers are in violation of the Federal Motor Carrier Safety and Hazardous Materials Regulations. Over 3000 Federal and state inspectors, operating at more than 300 locations throughout the U.S., will carry out extensive motor carrier safety inspections during the 3-day period. As part of ROADCHECK '93, nine states, one from each FHWA region, will combine their inspection forces with FHWA specialists nationwide, to emphasize the registration requirement and provide RSPA with a report of non-compliant parties for follow-up action. Finally, with the cooperation and support of the other administrations within DOT, RSPA has established an enforcement referral policy designed to take action against persons failing to register and pay the fee. To date, RSPA has identified more than 100 entities that have not registered and apparently are required to do so. We are referring information on those shippers and carriers to the modal agencies for appropriate enforcement action.

Although we were somewhat disappointed with the number of registrants who filed for the first cycle, we are encouraged by the

number of registrants to date for the 1993-94 registration year, which begins on July 1, 1993. Through our ongoing outreach and enforcement efforts, we estimate that 45,000 persons will register this year, which will generate $11.25 million for the grants program. If that number is significantly less than anticipated, RSPA will evaluate the program to determine whether the amount of the registration fee needs to be increased or other program adjustments need to be made in time for the next collection cycle.

PLANNING AND TRAINING GRANTS PROGRAM

The enforcement and outreach efforts of the registration program are critical because the funds generated by the registration program support our new emergency preparedness grants program. Through the grants program, we are working with the states to increase the training of emergency responders and assist local emergency planning committees. This assistance will reinforce the State Emergency Response Commission Local Emergency Planning Committee structure mandated by the Emergency Planning Community Right-to-Know Act of 1986, and enhance training in hazardous materials emergency response, which is vital to the continued safe and efficient transportation of hazardous materials.

This year is the first year of the grant program, and we have received an overwhelming response to it. In fact, approximately $3.5 million has been awarded to 49 states and territories so far this fiscal year, and we anticipate awarding a total of $8.9 million by the end of the 1993 fiscal year.

TRAINING RULE

In addition to providing needed resources for the preparation of emergency responders, HMTUSA also required RSPA to finalize its efforts to issue regulations requiring training to be given to all hazardous materials employees by their employers. This training covers the safe loading, unloading, handling, storing, and transportation of hazardous materials, and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials. It has been a little over a year since we issued the final rule on training - and the initial training of employees must be completed prior to October of this year. Recurrent training is required at least once every two years. Since most hazardous materials incidents can be attributed to human error, the better people are trained, the less likely they will become involved in or cause accidents.

This rule will assist in increasing safety by helping assure that all employees involved in hazardous materials are trained to perform their duties. As a result of this new regulation, we hope to see a measurable reduction in incidents involving hazardous materials.

NATIONAL ACADEMY OF SCIENCES STUDY

On April 29, 1993, a study on the feasibility and necessity of establishing a central reporting system and computerized telecommunications data center, capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials within the U.S., was transmitted by the National Academy of Sciences (NAS) to Congress and the Secretary of Transportation.

The center would also be able to identify hazardous materials being transported by any mode of transportation, and be capable of providing information to aid response to accidents and incidents involving the transportation of hazardous materials. We are reviewing the NAS study and preparing a report on the NAS recommendations to submit to Congress later this year.

REGULATIONS ON IMPROVING HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS

Closely related to this study is a rulemaking which addresses improvements to the current system of placarding vehicles transporting hazardous materials, and establishing a central reporting system and data center. An advance notice of proposed rulemaking was published last year; comments are being reviewed, and an analysis of those comments will be included in our report to Congress on the NAS study.

OIL POLLUTION ACT

In another major action, RSPA published an interim final rule in February to implement the Oil Pollution Act of 1990. The rule strengthens release prevention by subjecting the bulk transportation of previously unregulated oil to RSPA's Hazardous Materials Regulations issued under the HMTA. The purpose of the rule is to protect the environment from oil spills by requiring carriers to develop improved oil spill prevention efforts and emergency response capabilities. This is a controversial rule because the definition of oil in the Act includes non-petroleum oils such as vegetable oils. Because of the concerns expressed by the edible oil industry and others, a hearing was held here last

month and the comment period on the interim final rule was extended until June 3, 1993. We are currently reviewing the comments on the rule to determine further action.

CLOSING REMARKS

RSPA is committed to working with all segments of the hazardous materials community to safeguard our environment and improve hazardous materials transportation safety. At the Federal, state, and local levels, we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal--improved safety and nationwide uniformity in the application and enforcement of the Hazardous Materials Regulations.

We look forward to working with you in the coming months as you reauthorize the Hazardous Materials Transportation Act. Thank you and I will be happy to respond to any questions you might have.

STATUS OF THE DEPARTMENT OF TRANSPORTATION'S IMPLEMENTATION OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

Sec. 4 Federal Regulations Governing Transportation of Hazardous Materials

(1) Regulations

REQUIREMENTS:

The law requires the Secretary to issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce.

STATUS:

The Research and Special Programs Administration (RSPA) will extend the Hazardous Materials Regulations to intrastate transport of hazardous materials. The Advance Notice of Proposed Rulemaking (ANPRM) that was published on June 29, 1987, is being used as the basis for this action. An NPRM has been prepared and is under review.

(2) Preemption of Covered Subjects

REQUIREMENTS:

Non-federal regulations on certain covered subjects are preempted unless they are substantively the same as the Federal requirements.

STATUS:

Final rules on preemption standards and procedures were published on February 28, 1991, and May 13, 1992.

(3) Highway Routing

REQUIREMENTS:

The law requires the Secretary to issue Federal standards, established in conjunction with the States, to be used by the States and Indian tribes in establishing, maintaining, and enforcing: (a) specific highway routes over which hazardous materials may or may not be transported by motor vehicles, and (b) limitations and requirements with respect to highway routing.

STATUS:

The Federal Highway Administration (FHWA) developed and published a Notice of Proposed Rulemaking (NPRM) on August 31, 1992, and conducted a series of public hearings during October 1992. FHWA is preparing a final rule. Also, an Interim Final Rule was

published on September 24, 1992, establishing an FHWA regulation, consistent with previous RSPA regulations, for highway routing of radioactive materials shipments.

Sec. 5 Representation and Tampering - Regulations

REQUIREMENTS:

The law prohibits persons, by marking or otherwise, from representing that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements in Title 49, Code of Federal Regulations (CFR) unless it meets the requirements of all applicable regulations; or that a hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if it is not. The law also prohibits unlawful tampering with any marking, labeling, placarding or description on required documents or packages, containers, rail freight cars, aircraft, vessels or motor vehicles.

STATUS:

On February 28, 1991, RSPA published a Final Rule prohibiting unlawful representation and unlawful tampering.

Sec. 6 Maintenance and Disclosure of Shipping Papers - Regulations

REQUIREMENTS:

The law requires the Secretary to issue regulations specifying what information must be contained in shipping papers, where shipping papers are to be maintained during transportation of hazardous materials, and under what circumstances shipping papers shall be disclosed to appropriate emergency response authorities.

STATUS:

Maintenance and location of shipping papers are specified in the Hazardous Materials Regulations for all modes except rail. An ANPRM which addresses this issue is being developed by the Federal Railroad Administration (FRA) in Docket HM-201A.

Sec. 7 Training for Hazardous Materials Transportation Employees - Regulations

REQUIREMENTS:

The law requires the Secretary to issue regulations to establish requirements for training to be given by all hazardous materials employers to their employees regarding: 1) the safe loading, unloading, handling, storing, and transportation of hazardous

materials, and 2) emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials.

STATUS:

A Final Rule establishing training requirements for all persons involved in the transportation of hazardous materials (HM-126F) was published on May 15, 1992. The rule requires hazmat employers to begin training their employees no later than November 15, 1992, and complete training and employee testing by October 1, 1993.

Sec. 8 Hazardous Materials Transportation Registration; Motor Carrier Safety Permits

(1) Registration of Shippers and Carriers - Regulations

REQUIREMENTS:

The law requires persons who transport or cause to be transported certain hazardous materials to file a registration statement with the Secretary and pay an annual fee to fund an emergency preparedness program. The law requires registration filing by March 31, 1992, but the Secretary may extend that deadline to September 30, 1992.

STATUS:

On October 10, 1991, an NPRM was published in the Federal Register. Three hearings were held and over 160 comments were received. Comments were considered and a Final Rule was issued on July 9, 1992. Clarification and formal interpretations were published on July 28, 1992, and August 21, 1992. Simultaneously, RSPA mounted a massive public awareness and outreach program. The rule requires certain shippers and carriers to register and pay a $300 fee. The statutory deadline for implementing the program was met. Over 26,000 shippers and carriers have registered. The second year cycle of registration began in April 1993, with the mailing of renewal forms. Registrants must register and pay the fee by July 1, 1993.

(2) Permitting Regulations

REQUIREMENTS:

The law requires the Secretary to develop and publish regulations for the issuance and revocation of motor carrier safety permits, including application procedures and terms and conditions of permits. All hazardous materials motor carriers transporting Class A or B explosives, liquefied natural gas, hazardous materials designated as extremely toxic by inhalation, or highway

route controlled quantity radioactive materials must be issued a permit prior to transportation of those hazardous materials.

STATUS:

FHWA has prepared an NPRM which is expected to clear OMB before the end of June.

Sec. 12 Penalties

REQUIREMENTS:

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) provides for the assessment of civil penalties for violations of "orders" issued by the Secretary; increases the maximum civil penalty that may be assessed from $10,000 to $25,000 and establishes a minimum civil penalty of $250; defines "acting knowingly" for purposes of assessing civil penalties for violations; and provides criminal penalties for knowingly violating 49 U.S.C. 1804(f) or for willfully violating a provision of the Hazardous Materials Transportation Act (HMTA), or an order or regulation issued under the HMTA.

STATUS:

RSPA published a Final Rule implementing these provisions on February 28, 1991.

Sec. 13 Relationship to Other Laws, Determination of Preemption and Waiver of Preemption - Regulations

REQUIREMENTS:

The law establishes Federal preemption standards and provides for administrative determinations of preemption and waivers of preemption by the Secretary. The law also prohibits States from levying any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and planning, development, and maintenance of a capability for emergency response.

STATUS:

Final Rules implementing these provisions were issued on February 28, 1991, and May 13, 1992.

Sec. 15 Transportation of Certain Highly Radioactive Materials

(1) Railroad Transportation Study (Dedicated Train Study)

REQUIREMENTS:

The law requires the Secretary, in consultation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the railroad transportation industry and shippers of high-level radioactive waste and spent nuclear fuel, to study the comparative safety of using trains operated exclusively for transporting high-level waste and spent nuclear fuel with the safety of other methods of rail transportation, and report the results to Congress.

STATUS:

Funding for this study was not included in the fiscal year (FY) 1991 Appropriations Act, but was included in the FY 1992 Appropriations Act. A study was initiated with the Volpe National Transportation Systems Center (VNTSC) in FY 1992. A workshop was held in Denver on September 28-29, 1992, with the respective groups mentioned in the law, to discuss the issues. In addition, VNTSC has solicited comments from various groups to supplement the information from the workshop. A draft report has been prepared and is undergoing internal review. It is estimated that the final report should be submitted to Congress in September 1993.

(2) Safe Rail Transport of Certain Radioactive Materials

REQUIREMENTS:

The law requires the Secretary, taking into consideration the findings of the Railroad Transportation Study, to amend existing regulations, as appropriate, to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel by various methods of rail transportation, including dedicated trains.

STATUS:

Action required by this subsection is largely dependent upon the findings of the Railroad Transportation Study (Dedicated Train Study) which is currently ongoing. Refer to the status update on the Dedicated Train Study for additional information.

(3) Mode and Route Study

REQUIREMENTS:

The law requires the Secretary to undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which, in combination, would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel.

STATUS:

The VNTSC awarded a study contract in January 1993. A draft report is anticipated by November 1993. The study will benefit from work being conducted under the FRA's Dedicated Train Study.

(4) Inspections of Vehicles Transporting Highway Route Controlled Quantities of Radioactive Materials

REQUIREMENTS:

The law requires the Secretary to develop regulations governing the mandatory inspection and certification of motor vehicles prior to each use of that motor vehicle to transport highway route controlled quantity radioactive materials. Training materials must be developed and training courses must be conducted.

STATUS:

The radioactive materials inspection requirements in Section 15 will be included in the Safety Permit NPRM in Section 8.

Sec. 16 Safety Inspectors - Hiring

REQUIREMENTS:

The law requires the Secretary to employ and maintain 30 more inspectors above the number authorized for FY 1990. Ten of the inspectors must focus on radioactive material (RAM) activities, including point of origin inspections of high level RAM, and to the extent possible, other RAM. Of the additional inspectors authorized for RAM inspections, 1 is allocated to RSPA; not less than 3 are allocated to FRA; and not less than 3 are allocated to FHWA. The other 20 inspectors will be allocated among RSPA, FHWA and FRA at the Secretary's discretion.

STATUS:

RSPA was assigned one safety inspector to focus on promoting safety in the transportation of radioactive materials, including low level materials. A RAM inspector was hired, but subsequently resigned. RSPA intends to hire or assign another RAM safety inspector before the end of FY 1993.

The FHWA was allocated 3 positions of the 10 radioactive material inspector positions; FHWA hired 1 RAM specialist and 2 hazardous materials specialists. Of the 20 general hazardous materials safety inspectors, the FHWA was allocated 17 hazardous materials specialists in the field. All of those positions were filled by the end of FY 1991. With these additional positions, FHWA now has 32 hazardous materials inspector positions in the field and headquarters offices.

Funding for additional hazardous materials inspectors was not included in FRA's FY 1991 Safety budget; however, to implement this section of HMTUSA, the FRA FY 1992 safety budget did include funding for 6 hazardous materials inspector positions. FRA's FY 1993 safety budget was essentially the same as FY 1992 levels and did not specifically request additional funding to address HMTUSA requirements. In addition to the inspectors in the hazardous materials discipline, all 4 of the other FRA inspection disciplines, i.e., motive power and equipment, track, operating practices and signal and train control, contribute to the safe transportation of all hazardous materials, including shipments of both high and low level radioactive materials. At the end of FY 1990, FRA had 36 hazardous materials (discipline specific) field inspectors. Currently, FRA has 43 such inspectors, for an increase of 7 since FY 1990, which is a 20 percent increase over FY 1990 levels. Additionally, there are 8 hazardous materials supervisory specialists at the regional level, and a staff of 5 hazardous materials specialists at the headquarters level.

Sec. 17 Public Sector Planning and Training Grant Programs

(1) Regulations

REQUIREMENTS:

The law requires the Secretary to issue regulations to allow: (1) States to receive grants to develop, improve, and implement emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986, and determine the need for regional hazardous materials response teams, and (2) States and Indian tribes to receive grants for training public sector employees to respond to accidents and incidents involving hazardous materials.

STATUS:

The Final Rule implementing the Public Sector Training and Planning Grants was published on September 17, 1992. As of May 12, 1992, RSPA has awarded grants to States for emergency planning and training.

(2) Public Sector Training Curriculum

REQUIREMENTS:

The law requires the Secretary to develop and update periodically a curriculum necessary to train public sector emergency response and preparedness teams. The Secretary must consult with the regional response teams established pursuant to the National Contingency Plan, persons who provide training for responding to accidents and incidents involving transportation of hazardous materials, and representatives of persons who respond to such accidents and incidents.

STATUS:

RSPA established a curriculum development workgroup, composed of representatives of the Federal Interagency Coordination Group, to develop a national curriculum which will be articulated in two ways: first, as training guidelines to measure the adequacy of courses, and second, as the more traditional model curriculum with required hours and courses. RSPA and the Federal Emergency Management Agency (FEMA) have begun drafting the curriculum with the assistance of the workgroup. The national curriculum, acting as a measuring stick for grant applications, will help responders obtain training to assist them in meeting Occupational Safety and Health Administration and Environmental Protection Agency regulations and National Fire Protection Association guidelines. The workgroup will also identify existing sources which provide information on available courses; support FEMA in its effort to establish dissemination procedures (which are required by HMTUSA), and establish mechanisms and timing for agency review to minimize duplication of effort. The national curriculum draft guidelines were published on April 1, 1993, and are now in review.

(3) Minimization of Duplication of Federal Effort - Review

REQUIREMENTS:

The Secretary and the heads of other Federal departments, agencies and instrumentalities are required to review periodically all emergency response and preparedness training programs of those agencies for the purpose of minimizing duplication of effort and expense in carrying out such training programs and take such actions, including coordination of

training programs, as may be necessary to minimize such duplication of effort and expense.

STATUS:

The requirement is being performed by the Federal Interagency Coordination Group, consisting of the Department of Transportation (DOT), Federal Emergency Management Agency, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Energy, and the National Institute of Environmental Health Sciences. It is an ongoing effort.

Sec. 18 Hazmat Employee Training Grant Program

REQUIREMENTS:

HMTUSA authorizes the National Institute of Environmental Health Sciences (NIEHS) to make grants to nonprofit organizations involved in training private sector hazmat employees.

STATUS:

The FY 1993 DOT Appropriations Act limited funding for the grant program, including the NIEHS grants, to $11 million, and provided that funding shall be available only through the Secretary of Transportation. In addition, this program duplicates the effort required under Section 106 of the Hazardous Materials Transportation Act, which requires private sector employers to train hazardous materials employees.

Sec. 19 Railroad Tank Cars - Regulations

REQUIREMENTS:

The law prohibits the use of railroad tank cars for the transportation in commerce of hazardous materials unless the air brake equipment support attachments comply with the standards for attachments set forth in Title 49 CFR, Parts 179.100-16 and 179.200-19, in effect on the date of enactment. This prohibition took effect in two phases: the first was the date of enactment (November 16, 1990) for Class A and B explosives and materials designated as poisonous by inhalation, and the second was July 1, 1991, for any hazardous materials.

STATUS:

On October 8, 1991, FRA issued a Final Rule effective on October 8, 1991, prohibiting the transportation in commerce of all hazardous materials in tank cars with air brake support attachments that did not comply with the standards set forth in Title 49 CFR, Parts 179.100-16 and 179.200-19, that were in effect as of November 16, 1990.

Sec. 20 Application of Federal, State & Local Law to Federal Contractors - Regulations

REQUIREMENTS:

HMTUSA makes Federal contractors transporting hazardous materials or manufacturing, fabricating, marking, reconditioning, repairing or testing a package or container for use in the transportation of hazardous materials subject to all applicable Federal, State, local, and Indian tribal regulations, except where preempted by the HMTA or other Federal law, in the same manner and to the same extent as any person engaged in such activities.

STATUS:

On February 28, 1991, a Final Rule was published making Federal contractors subject to all applicable Federal, State, local, and Indian tribal regulations, except where preempted, in the same manner and extent as any person engaged in such activities.

Sec. 21 Railroad Tank Car Study

REQUIREMENTS:

The law requires the Secretary to enter into a contract with an appropriate disinterested body for a study of (1) the railroad tank car design process, including specifications development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, weighed, and evaluated, and (2) railroad tank car design criteria, including whether head shields should be installed on all tank cars which carry hazardous materials. The Secretary is to report the results of the study to Congress.

STATUS:

Funding for this study was not included in the FY 1991 Appropriations Act, but was included in the FY 1992 Appropriations Act. A study was initiated with the Transportation Research Board (TRB) of the National Academy of Sciences in FY 1992. A TRB committee has been formed and has held two meetings on the issues. The report to Congress is expected to be completed in September 1994.

Sec. 22 Uniformity of State Motor Carrier Registration and Permitting Forms and Procedures - Report

REQUIREMENTS:

The law requires the Secretary to establish a working group to develop uniform forms and procedures for States to use in registering and permitting entities which transport hazardous

materials over highways. The group will report to Congress within three years of enactment on its findings and recommendations on nationwide uniformity of hazardous materials transportation over highways. HMTUSA also requires the Secretary to issue regulations, implementing those recommendations with which he agrees, that are contained in the report.

STATUS:

The FHWA established a working group to provide uniform forms and procedures for States' use in registering and permitting hazardous materials highway mode shippers and carriers and to make recommendations regarding base state registration/fee collection in a Final Report to the Secretary, to the Senate Commerce Committee, and to the House Public Works Committee. The Working Group (Alliance for Uniform Hazardous Material Procedures) will meet May 23 - 25, 1993, in St. Louis, Missouri to finalize recommendations to FHWA. The recommendations will include a model Base State Hazardous Materials Registration and Permitting System. The form and complete Base State program will be tested in a four-State (West Virginia, Ohio, Nevada, and California) pilot program beginning in July 1993. The deadline for the final report to Congress is November 16, 1993.

Sec. 23 Financial Responsibility - Regulation

REQUIREMENTS:

The law establishes a $5,000,000 minimum level of financial responsibility for hazardous materials carriers. The law allows the Secretary, by regulation, to reduce the $5,000,000 for any class of vehicles or operations for the 3 1/2 year period beginning on the effective date of the regulations or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.

STATUS:

The Department will prepare a regulation, if warranted.

Sec. 24 Federally Leased Commercial Motor Vehicles - Guidelines

REQUIREMENTS:

The law amends the Motor Carrier Safety Act of 1984 to allow any State which receives Motor Carrier Safety Assistance Program funds to apply any regulations pertaining to commercial motor vehicles (CMV) safety to federally leased CMV's.

STATUS:

Although the language in Section 24 is permissive, the FHWA will notify the States about the amended law so that they may address this in their upcoming legislative sessions.

Sec. 25 Improvements to Hazardous Materials Identification Systems

(1) Regulations

REQUIREMENTS:

HMTUSA requires the Secretary to conduct regulatory proceedings to determine methods: (1) of improving the current system of placarding vehicles transporting hazardous materials, and (2) for establishing a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials; to identify hazardous materials being transported by any mode of transportation, and provide information to facilitate responses to accidents and incidents involving hazardous materials.

STATUS:

RSPA issued an ANPRM (HM-206) on June 9, 1992, that addressed both placarding and a central reporting system and data center. RSPA received more than 200 comments. These rulemakings have been delayed pending completion of a study by the National Academy of Sciences (NAS) which is required by Section 25(b) of the HMTUSA.

(2) Central Reporting System and Computerized Telecommunication Data Center Study - NAS

REQUIREMENTS:

HMTUSA requires the Secretary to enter into appropriate arrangements with the NAS to conduct a study of the feasibility and necessity of establishing and operating a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials; that can identify hazardous materials being transported by any mode of transportation, and that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

STATUS:

RSPA contracted with the NAS to conduct the study. The report was completed and sent to Congress and the Secretary of Transportation on April 29, 1993.

(3) Review of NAS Study and Report to Congress

REQUIREMENTS:

The law requires the Secretary to review the report of the NAS and the results of rulemaking, prepare and submit to Congress a report summarizing the report and the results of rulemaking, together with the Secretary's recommendations concerning the establishment and operation of a central reporting system and computerized telecommunications center and the Secretary's recommendations concerning implementation of the recommendations contained in the NAS study.

STATUS:

RSPA will review the comments to the rulemaking docket (HM-206), as well as the NAS study, and prepare and submit to Congress a report with the Secretary's recommendations.

Sec. 26 Continually Monitored Telephone Systems - Regulations

REQUIREMENTS:

The Secretary is required to initiate a rulemaking proceeding on the feasibility, necessity, and safety benefits of requiring carriers involved in the hazardous materials transportation industry to establish continually monitored telephone systems equipped to provide emergency response information and assistance with respect to accidents and incidents involving hazardous materials.

STATUS:

RSPA included this issue in the ANPRM published on June 9, 1992.

Sec. 27 Shipper Responsibility Report - Report to Congress

REQUIREMENTS:

The law requires the Secretary to submit a report to Congress on the safety benefits of a law requiring a shipper to share liability for costs, damages, and fees assessed against the motor carrier for bulk hazardous materials incidents, if the shipper has used a carrier with an unsatisfactory or conditional safety rating.

STATUS:

The FHWA submitted the report to Congress on November 5, 1991. The report concluded that although a shipper responsibility law might marginally increase pressure on carriers to operate safely, it is unlikely that the improvement would be significant. The financial responsibility regulations currently in effect adequately protect the traveling public from the risk of uncollectible judgments. The Department believes that the Motor Carrier Safety Act and HMTA will accomplish as much as, if not more than, a shipper responsibility law. The DOT has, therefore, concluded that the proposed shipper responsibility law is unnecessary.

Sec. 28 State Participation in Investigations and Surveillance

REQUIREMENTS:

The law amended Section 206 of the Federal Railroad Safety Act of 1970 (FRSA) to permit state inspection and surveillance under any Federal regulation "related to railroad safety." The express intent of this amendment was to make the hazardous materials regulations issued under the HMTA one of the Federal railroad safety regulations covered by FRA's state participation program.

STATUS:

On June 24, 1992, the FRA published a Final Rule, effective on July 24, 1992, revising the regulations in Title 49, CFR, Part 212, concerning State participation in railroad safety inspections and investigations with respect to the transportation of hazardous materials.

Sec. 29 Retention of Markings and Placards

REQUIREMENTS:

The law requires the Secretary of Labor to issue regulations to require any employer who receives a package or vehicle containing hazardous materials to retain markings, placards, labels, and other information required by the Hazardous Materials Regulations until the hazardous materials have been removed from the package, container, or transport vehicle.

STATUS:

RSPA is requesting the Department of Labor to make a direct reply on the status of their rulemaking on the retention of markings and placards.

TESTIMONY OF ROBERT MESSEMER
DIRECTOR OF DISTRIBUTION, RHONE-POULENC, INCORPORATED
FOR THE CHEMICAL MANUFACTURERS ASSOCIATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEE
ON SURFACE TRANSPORTATION

JUNE 8, 1993

Good morning Mr. Chairman, I am Robert Messemer of Rhône-Poulenc, Inc. and I am representing the Chemical Manufacturers Association (CMA). CMA appreciates the opportunity to present the chemical industry's view on reauthorization of the Hazardous Materials Transportation Act (HMTA).

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. The U.S. chemical industry employs more than 1 million people and had a positive trade balance of $16.3 billion in 1992. As major shippers of hazardous materials, CMA member companies are strongly committed to efforts to enhance the safe and efficient transportation of chemicals.

OVERVIEW OF CMA'S POSITION

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), which reauthorized the HMTA, established an excellent framework for strengthening the existing regulations. The law requires a consistent foundation for employee training, sets the stage for improvements to the hazardous materials identification system, and helps establish a system for collection and disbursement of funds for emergency response training. The law also establishes a structure for how states may designate highway routes and a mechanism for increasing consistency in state registration and permitting programs. CMA supports all of those provisions of HMTUSA.

While the Department of Transportation (DOT) has completed many of the actions mandated by law, a number are still in development. Even with the finished actions, it is too early to determine their effectiveness. Before Congress makes any revisions to the HMTA, CMA believes more time is needed to allow for complete implementation of HMTUSA and evaluation of its efficacy. Therefore, we support Chairman Nick Rahall's bill, HR 2178, which is a "clean" reauthorization of HMTA.

STATUS OF MANDATED ACTIONS

DOT has completed several of the rulemakings and other actions mandated by HMTUSA, while others are in various stages of development. What follows is a review and evaluation of activity to date.

NATIONAL ACADEMY OF SCIENCES STUDY

The HMTUSA required DOT to contract with the National Academy of Sciences (NAS) to prepare a study on the "feasibility and necessity of...a central reporting system and computerized telecommunications data center" for tracking all hazardous materials shipments.

The NAS committee charged with performing the study recently completed and released its report entitled "Hazardous Materials Shipment Information For Emergency Response." The committee reached several important conclusions.

Although CMA does question some specific statements made in the study, we do concur with the finding that a central reporting system for all hazardous materials shipments "would be unlikely to function as intended or to produce benefits sufficient to justify its costs." We also agree that DOT, which commissioned the NAS study under an HMTUSA mandate, "should not attempt to implement" such a system.

Additionally, CMA agrees with the NAS committee that the current system for communicating emergency response information is successful, but improvements can be made. As the study notes, more aggressive enforcement, better training of responders, and some regulatory changes "might significantly reduce" any existing problems. CMA supports that position.

The NAS study also recommends some pilot testing of automated information systems. CMA notes that technology is evolving and several tracking and incident systems are in use today. The suggested pilot programs could prove useful, but the continuing evolution of technology and the free market should also help determine the feasibility of various systems. It is important to keep in mind, as the study states, that "technology probably is not the key to solving any of the problems, although it may play a complementary role."

IMPROVEMENTS TO THE HAZARDOUS MATERIALS IDENTIFICATION SYSTEM

In addition to the NAS study, HMTUSA required DOT to complete a complementary rulemaking on improvements to the hazardous materials identification system. This rulemaking (Docket HM-206) presents an excellent opportunity to make some useful regulatory changes. DOT has not yet finalized the rule initiated under the mandate.

CMA has offered DOT several suggestions for improving the placarding system. We support both efforts to enhance the information available to responders as well as active enforcement of the regulations.

CMA looks forward to completion of this important rulemaking since the National Academy of Sciences study is now finished.

TRAINING

CMA supports the training regulation promulgated by DOT. This rule requires employers to furnish and document employee training, depending on the employee's involvement in hazardous materials transportation, by October 1, 1993. Our members have always considered employee training of paramount importance. To help

companies train employees, CMA has developed training programs which are available to both members and nonmembers. DOT's regulation sets up up a consistent structure by which to establish necessary hazardous materials training programs.

EMERGENCY RESPONSE TRAINING

Another significant DOT rulemaking established procedures for states to obtain grants from the federal government for training emergency responders. Trained emergency responders are a key element in hazardous materials safety, and CMA applauds efforts to increase their knowledge.

Government actions complement industry activities. For example, CMA actively assists emergency responders through our training programs and the Lending Library, which loans audiovisual materials to responders at no charge. These programs have reached nearly three-quarters of a million responders since 1985. As we will detail below, an interindustry initiative called TRANSCAER® also promotes training of responders.

FEDERAL ROUTING STANDARDS

HMTUSA requires DOT to establish routing standards for states to follow when designating highway routes for hazardous materials transportation. CMA supports the intent of this provision because it encourages consistency and order in how states and localities make routing decisions and gives affected parties ample opportunity to participate in maintaining a safe and efficient routing system for hazardous materials. Participation by all knowledgeable parties in the process should result in the best decisions on routing, thereby enhancing safety.

UNIFORMITY IN STATE REGISTRATION AND PERMITTING

Under this provision, DOT contracted with the National Governors' Association and National Conference of State Legislatures to study and make recommendations on how states can establish uniform forms and procedures for registering and permitting shippers and carriers involved in the transportation of hazardous materials. DOT is required to implement the recommendations. The study is on schedule with a pilot program to be conducted over the next two years. CMA and individual member companies have worked closely with state government representatives to develop mutually beneficial recommendations.

REGISTRATION

The registration program is in place and about to enter its second year. CMA supported the regulation and believes that DOT established a fair and workable system. The registration program will provide needed funding for emergency response training and help give the DOT and the public a better idea of the universe of those involved in hazardous materials transportation. We continue to assist DOT in communicating the requirements of the rule to covered businesses.

We do, however, have one concern with the registration program. DOT has interpreted HMTUSA to require registration of domestic and foreign

shippers and transporters. CMA believes the law gives DOT some discretion in this area. Careful consideration should be given to the possible international trade impacts if foreign entities are required to register. Imposition of a fee could result in retaliatory action against U.S. firms operating overseas. CMA has urged DOT to consult with the U.S. Departments of State and Commerce, along with foreign countries, to assess the implications of the rule. While an amendment may not be necessary, CMA urges Congress to clarify its intent for this provision of the HMTUSA.

INDUSTRY INITIATIVES

Appropriate regulations can promote safe and efficient hazardous materials transportation, but independent and voluntary industry activities are also essential to achieve those goals. CMA is involved in many such initiatives.

For example, CMA members are committed to Responsible Care®, a voluntary industry initiative designed to continuously improve performance in health, safety and environmental quality. The safe transportation of chemicals is a significant component of the Responsible Care® initiative. Under the Responsible Care® Distribution Code, members are making great strides in areas of distribution activities such as risk management, compliance review and training, carrier safety, handling and storage and emergency preparedness.

CMA is also committed to assisting emergency responders through CHEMTREC® -- the Chemical Transportation Emergency Center. For over 20 years, CHEMTREC® has provided a 24-hour toll free telephone service which allows responders at the scene of an incident to obtain timely information and technical guidance for mitigating both hazardous and non-hazardous materials releases. CHEMTREC® can also establish a communications link between the scene and shippers of the materials involved.

Over the past several years, CMA has continually upgraded CHEMTREC®. CHEMTREC® now maintains a database of more than one million material safety data sheets (MSDS's) in a state-of-the art optical storage and retrieval system. The system allows faxing of MSDS's, which contain key health, safety and emergency response information about specific chemicals, directly to emergency responders.

CHEMTREC® can also make telephone connections between responders and representatives of more than 12,000 chemical manufacturers and shippers and many major carriers.

Many third parties handle chemicals in the distribution chain. In the spirit of Responsible Care®, CMA has worked with allied industries to promote safety. Recent examples are the Interindustry Rail Safety Task Force (consisting of CMA, the Association of American Railroads, and the Railway Progress Institute) and the Interindustry Bulk Chemical Highway Safety Task Force (consisting of CMA and National Tank Truck Carriers, Inc.). Both partnerships have resulted in development and implementation of recommended practices to enhance safety.

Another important initiative is TRANSCAER® -- Transportation Community Awareness and Emergency Response. Under TRANSCAER®, industry is working with citizens to develop mutual understanding about the hazardous materials moving through their communities and providing guidance and training to emergency responders. TRANSCAER® sponsors include CMA, the Association of American Railroads, National Association of Chemical Distributors, National Tank Truck Carriers, Inc., American Petroleum Institute, Hazardous Materials Advisory Council, American Trucking Associations, Inc. and The Chlorine Institute.

CMA continually looks for opportunities to work with related industry groups to promote mutual efforts on safety.

CONCLUSION

HMTA, as recently amended by HMTUSA, is an excellent law which addresses the key areas affecting the safe transportation of hazardous materials. DOT has implemented some provisions, but several are still in development. CMA believes these activities should be allowed to progress while all involved continually monitor their effectiveness. We recommend that Congress treat HMTA as a "work in progress" and reauthorize the legislation without revision.

The regulations developed under HMTUSA will help enhance hazardous materials transportation safety, but voluntary industry activities are also a key to success. CMA proactively develops and participates in such initiatives. These include Responsible Care®, TRANSCAER®, CHEMTREC® and interindustry initiatives with our carrier partners. These initiatives, coupled with well thought-out regulation and aggressive enforcement, will foster a safe and efficient hazardous materials transportation system.

Testimony of
JOHN F. MULHOLLAND
before the
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
June 8, 1993

Good Morning. My name is John Mulholland. I am President of Source Data Network, the company which developed the Computerized Telecommunication Central Reporting and Data System (the "System").

Mr. Chairman, I very much appreciate this opportunity to appear before you and Members of this committee. In doing so, I express my support of the reauthorization of the Hazardous Materials Transportation Act, and urge that specific language be included to mandate the implementation of the System. Others may testify to the fact that no such system presently exists in a satisfactory or operational form, and may quote from the recently released Special Report 239 of the National Academy of Sciences Transportation Research Board to support this position. Mr. Chairman, I am here to tell you that this is definitely not the case.

Special Report 239 gives the history of a failed, ineffective and inappropriate system that was condemned back in 1983 when Special Report 197 was released. The two and one half year study which resulted in SR 197 made eight serious recommendations, (copy attached) which were similar to those made in SR 239. On page 24, Vol.1 of SR 197, the first three paragraphs under "Emergency Information" contain the first clues that the Chemtrec system was inadequate. The report referred to the fact that emergency response guidebooks are only published at three year intervals, with 300 to 500 new chemical compounds coming into use every year. This three year delay of publication means that as many as 1500 chemical unknowns may be in the transportation system, the contents of which remain unknown to those first responders who need to know instantly what the hazardous cargo is. Only a computerized telecommunication system, containing current reliable data, can make this information immediately available at the incident site. The placard system has many problems (as noted in SR 197 and SR 239) and results in uncertainty in the minds of first responders as to the reliability of the placard system.

Page 25 of SR 197 under RECOMMENDATION 4 (first paragraph) calls for the technology that we devised when we developed the first Computerized Telecommunication Central Reporting System and Data Center back in 1983. Page 64 Vol.2 of SR 197 (the second paragraph) reveals, in simple terms and technology, what my colleagues and I have accomplished in more sophisticated technology, and is reflected in H.R. 2584.

Source Data Network, utilizing the finest brains in the computer telecommunication industry, including Dr. Paul Fingerman of the Boeing Company, and Dr. Milt Zohn of the Martin Marietta Company, became the creator of the System back in 1983. This system was the primary subject of SR 239, yet for reasons unknown to us, SDN was not asked to appear before the TRB. Only when communication was initiated by us with the staff of the TRB, (letter attached) was an invitation to appear extended. Why no mention of my testimony or the SDN System was made in the report is a matter of no small conjecture on our part.

Public Law 93-633, Section 102 states that the purpose of the Transportation Act of 1974 is "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Section 109 (d)(2) states that "The Secretary shall--establish and maintain a central reporting system and data center so as to be able to provide the law enforcement and fire fighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies, connected with the transportation of hazardous materials;".

In essence, SR 239 does not dispute the need for modern technology, but section 4 of the report explores the possibility of the chemical industry and its surrogates developing a system which, like the present ineffective one, would be completely under its control, and spend not its own money, but hundreds of millions of tax dollars in R & D. This would allow them to continue to control oversight over their own industry as they have done since March 13, 1980 when RSPA, under the direction of DOT, signed the STATEMENT OF FORMAL RECOGNITION AND ATTENDANT UNDERSTANDINGS with the Chemical Manufacturers Association Inc.

This document has permitted thirteen years of self-supervision over its own ineffective system, continued use of which was protested by the International Association of Fire Fighters. This total, self-serving control by the chemical industry has stifled support for an advanced computerized telecommunication technology, rendered useless the sophisticated computerized data bases of the National Response Center (NRC) and emasculated the authority and emergency response capabilities of the Federal Emergency Management Agency (FEMA).

In its recommendations, SR 239 all but ignores the availability of a state-of-the-art System which already exists. Specifically, the report suggests that $300 Million should be made available to fund a two year study to develop a system which would do what the Source Data Network System was ready to do ten years ago. When life and property are still unprotected and the lives of fire fighters and other emergency response personnel are in constant jeopardy--as those brave men in Kansas City who lost their lives in 1988 because of 10 years of inaction--further delay in adopting an effective reporting system is simply not acceptable.

The Source Data Network System was developed in the private sector with private funds, therefore making unnecessary the need for federal dollars, as suggested in SR 239, to re-invent what has already been accomplished and proven.

SDN system will function with industry user fees on a "per manifest" basis and, therefore, doesn't require Federal funds to operate. Adoption of this system will result in the savings of $12.2 billion annually to the industry. Additionally, it is set up to provide a trust fund through which millions of dollars will flow to 39,000 communities to train, equip and purchase the appropriate telecommunication equipment, and to provide funding to governors of states in order to comply with the requirements of SARA Title III, which is currently unfunded. With the implementation of the System, the National Response Center, becomes a viable organization as was intended by CERCLA by being able to interface FEMA, the Army Corps of Engineers and other federal authorities with state, county and local response facilities as well as Military Commands in the case of catastrophic natural disasters such as Hurricane Andrew. SDN is truly the "missing link" which can bring the federal disaster response mechanism into it's maximum potential in full compliance with all federal law, including HMTA, CERCLA, and SARA Title III.

Following hurricane Andrew, millions of people witnessed as Andrew Card, then Secretary of Transportation on CNN, stood in the debris of devastated Homestead, Florida, and decried the lack of a telecommunication system that could give definitive data from the incident site to the county and state emergency response facilities in order to trigger the time when federal troops should be called in to aid in the response process. The whole country was aghast as to why, in this age of high technology, such a system was not already in use. Mr. Chairman, with the immediate implementation of the SDN SYSTEM, the answer to that question would find life tomorrow, without requiring the expenditure of one cent of tax payer dollars.

Attached you will find my critique of the numerous inaccuracies, assumptions and conclusions of SR 239. In my opinion, this report is not scientific in nature, and has done a terrible disservice to our country.

In conclusion, I respectfully request that this committee consider mandating the use of proven, present technology which meets the letter as well as the spirit of Public Law and Congressional intent expressed over the past 19 years. This country and emergency response workers have waited long enough.

At this time, I would be pleased to answer your questions.

Source
Data
Network

11900 Parklawn Drive, Suite 340
Rockville, Maryland 20852
(301) 770-3902

Dear Mr. Chairman and Members of the Subcommittee

I am pleased that I have been invited to testify, at the last minute, at one of the most important hearings the Congress can hold in this decade. If the reauthorization of the Transportation Act does not contain verbiage and direction to the Secretary of Transportation to immediately implement the Computerized Telecommunication Central Reporting System and Data Center (SYSTEM), our country faces technology stagnation resulting in injury, deaths, massive property damage, loss of businesses, jobs and income, resulting from both man made and natural disasters because of the inability to properly respond in mass, to minimize the devastation that is known to follow these quirks of fate.

What has transpired in the past and continues to control our destinies in the emergency response field must come to an end, and you on this committee, have the authority to rectify the pitiful conditions that have been imposed on the American people by self serving entities. I approach with what I have to say with some trepidation, because it can be taken as sour grapes from David facing the Big Guy, but the question is why did David take on the Big Fellow if it were not for the sake of the more unfortunates who have little, or no control of their own destinies. You with objective thinking, can end the sad commentary on an inept system that continues to plague the masses by ignoring federal laws formerly passed by you and your colleagues to protect life and property.

You may read reams of true or false documents, but recent history has shown those false documents seem to prevail because of the powerful positions that have been bestowed on those who enjoy might as opposed to right. and they shall continue to prevail until you take positive action. By your seating on this committee means you can change what is, to what should be. I am speaking of state-of-the-art technology that has been stifled too many years to the detriment of your constituents, and the attempt is to continue that tradition holds today.

Source Data Network is the developer of the SYSTEM which could have been operational ten years ago and is now under consideration for implementation which could start tomorrow. however those powers are at work again to control and restrict the use of known technologies until such time they become competent enough to implement their own. This short fable is what is before you today and is confirmed by what you will, or may have already read in the National Academy of Sciences Special Report 239.

SDN, was not even invited to give a presentation before the committee until such time the attached letter was written, and then an invitation was eventually extended. The very reason the committee was formed was to evaluate, at a cost of $350,000, the SDN SYSTEM as reflected in H.R. 2584 of the 101st Congress.

On the day of presentation, an operational 25:40 minute VHS tape of the SYSTEM was shown to the committee and a 103 page document was given to each participant of the committee. The attached critique will readily described the results of that meeting, but interestingly enough, not one pertinent question, of any meaning, was asked by anyone. Now, upon reading the fraudulent document cloaked in the guise of the former prestige of the National Academy, one has got to asked who made all this false assumptions, conclusions and prophecies when the ONLY experts in the field are myself and my colleagues. The item of a $12 billion cost is a blatant falsehood, while the true picture is a $12.2 annual saving to industry which becomes a taxable windfall to the U.S.Treasury.

For the past ten years, since Special Report 197 of the National Academy was released, with virtually the same recommendations as presented in this recent fiasco, the powers in charged have, and still do, wallow in promises and excuses while the storm rages over those they were to protect. Now with the threat of modern technologies over their head and about to be implemented, they cry in SR 239 give me $300 million more dollars and two (?) years and I an do what SDN did ten years ago. You now know the reason for my fable, because a new one is unfolding but cannot be accepted. This strangle hold over the lives and property of the people you have sworn to protect must be broken before the next disaster strikes, and mothers, fathers and babies cry and the citizens ask, how come.

By utilizing the marvelous technologies on hand that exist in the NRC, and yes, even in FEMA who have been devastated by disasters, not all of which are of their own making, and the U.S. Corp. of Engineers coupled with the technologies of the SYSTEM. Future Secretaries and Directors will not be standing in the debris of Homestead Florida, or California, or Louisiana, or for that matter anywhere in the world asking What Can I DO? We have had over 13 years of total ineptness with archaic methods and it time for you to bring in the new technologies to get the job done.
Thank you.

S Source Data
D
N Network

12300 Twinbrook Parkway • Suite 500 • Rockville, Maryland 20852 • (301) 770-3902

March 23, 1992

Mr. Joseph R. Morris
Senior Program Officer
National Research Council
Transportation Research Board
2001 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Dear Mr. Morris,

For your information, I received your letter dated March 11, 1992 on March 20, 1992 so that you will not think me tardy in my response.

I was previously informed by Mr. Jim Hart that I would hear from you, and could expect to make a presentation before the panel.

As one of the drafters of S. 2892 (July 31, 1986), S.R. 1884 (September 23, 1987) and H.R. 2584 (June 8, 1989), all dealing with your subject matter, now incorporated in P.L. 101-615, and being the only person in the United States to have developed such a operational system without tax dollars, I am most anxious to appear before the panel. This appearance would eliminate many false pre-conceived ideas as to how my real time system operates by those who have not seen, nor have the comprehension to understand this type technology. It will also give the panel an in depth view as to why and how TRB became funded and why the panel was formed. The study is a most welcomed one, but without my participation, the study would be a farce, for it was I, with the help of many believers in Congress who brought this deplorable condition to a head.

You must recall our meeting of October 14, 1991 when you saw our VCR tape on the total system in operation (ON BORROWED TIME/A NATION AT RISK), a copy of which I left you at your request. I am sure you will remember how the system interfaces with the demographics of any appropriate coordinates so that proper evacuations might be carried out. Without this type of information as to what the current state-of-the-art truly is, is burying ones head in the sand and doing a total disservice to what we are led to believe the National Academy stands for.

A proper presentation on our tape, before the panel, will not only answer the questions contained in your letter, but other information and data will stagger their current concepts as to what is, but what should and can be. I look forward to a personal presentation and await a time for such a presentation.

Respectfully submitted,

John F. Mulholland
President

cc: Honorable Douglas Applegate
Honorable Sherwood L. Boehlert
Honorable Norman Mineta

Critique of Special Report 239

1. A 25:40 minute VHS tape was shown to the committee demonstrating the SYSTEM in operation and how it interfaced with an emergency evacuation system required under SARA Title III.
1. Not one question was asked concerning the operation, how it worked and interfaced with evacuation modes.
2. Not one statement of disagreement was made as to operation or input technology.
3. The FREE use of dedicated telephones lines was discussed for use by major shippers and how the only additional piece of work for entering a manifest on the already required Universal Manifest Form was to push the enter key to release the data, across the dedicated lines to our mainframe computers.
4. Small users will be given an 800 telephone number to use in entering data on the mainframe computers.
5. The verification system used to omit errors during input of data was never questioned.
6. One statement was made to the effect that businesses would have to buy new computers. The answer was no, that under H.R. 256- the mainframe computers be required to except all known systems and data bases. Generally done by emulation, he did not understand the term.
7. When asked if there were any other questions, there were none.
8. The committee had the opportunity to accept, criticize or question the SYSTEM, but did nothing.
9. No questions were asked of SDN concerning page 24 of Special Report 239 relating to Sec. 25 IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEM. These questions shall be answered in written testimony before the House Public Works and Transportation Subcommittee on Surface Transportation on June 8, 1993.
10. Page 26 Reference "Real Time" OTA concluded neither feasible nor cost effective. When queried by Congressman Applegate as to basis for such findings. Edith Page, Director of Project stated they had no specifics nor data to support their position. It was based on common assumptions. Letter to Mr. Applegate, dated May 21, 1987 stated in part "In the meantime, a colleague at the Congressional Research Service, Dr. Paul Rothberg, has told me that he was present at a demonstration of the system, and that it had worked smoothly". signed Edith B. Page, Project Director.
11. Bottom page 26. Only the shipper (generator) is responsible for submission of the manifest on the computer system with the exception of a terminal transfer of product to a different carrier (trailer, train car etc.) for at the time the carrier becomes the agent for the original shipper.
12. Page 27 Fee to be established through negotiations with Secretary of DOT.
13. Page 27 at no time was DOT required to establish a program to equip firefighters and police with telecommunication equipment.

Critique page 2

To the contrary, SDN would establish a trust fund for the training, equipping and purchase of telecommunication equipment for police, fire fighters and 39,000 communities from a portion of the manifest fee. The trust fund should disperse approximately $186,000,000 annually for this purpose, with an additional $186,000,000 annually to State Governors in order to comply with the provisions of SARA Title III.

14. Page 28 Significant specifications are detailed as to the requirements of the system in H.R. 2584 101st Congress.
15. Page 28 Reference "Since the system would not perform the immediate warning functions of placards etc," TOTALLY FALSE ASSUMPTION, for the SYSTEM would give the first responder specific, reliable information instantly, on site in seconds, before ever approaching the incident.

MAJOR QUESTION: WHO MADE UP ALL THIS FALSE ASSUMPTION, SINCE I, JOHN F. MULHOLLAND HAVE NEVER BEEN QUESTIONED AND I AM THE ONLY PERSON WHO KNOWS HOW AND WHAT THE SYSTEM WILL DO. THIS WHOLE CHARADE IS A TOTAL FRAUD and A TOTAL DISCREDIT TO THE NATIONAL ACADEMY of SCIENCES.

0 Executive Summary (E.S.) pg.1- Correction; carriers enter no data except at transfer stations when manifest are closed and opened as occurs in standard operation conditions. During transport the carrier becomes an agent for the shipper

0 E.S. pg.2- Congress should not pay any funding. If private sector wants participation in project, they should use own funding as SDN did.

0 E.S. pg.2- Why should DOT exclude other private sectors such as SDN? This is not a good old boy network. AAR and ATA are surrogates of CMA. Reason why no progress since S.R. 197 released in 1983.

0 E.S. pg.3- #8 The government should immediately implement this proven system and fulfill the mandate of Congress. Save and protect life and property.

0 E.S. pg.4- Abandon existing systems, as they have failed miserably.

0 E.S. pg.5- Have not included the 40% increase ABOVE THE NOPM for sickness (cancer) and accidents for fire fighters because of unknown hazards.

0 E.S. pg.6- Transportation Safety; there are no records to base these figures on. Pure conjecture.

Critique page 3

0 E.S. pg.7- There is no certification as to the correct status listed on the placard, the system is extremely faulty and should be abandoned.

0 E.S. pg. 10- The SYSTEM stands on its own for total information gathering and dissemination.

0 E.S. pg.11- Enforcement and training will improve when definitive data is made available to the officers at the site.

0 E.S. pg.11-Feasibility and cost section---pure garbage, the system is not designed for nintendo players, but those who play a vital role in industry. The writer of this section never worked in the real world, probably an academic.

0 E.S. pages 12 through 21- A ludicrous thought pride [illegible] someone never involved in all facets of industry. This is one reason why only SDN has developed a system in operation. With this thought process there may never be another system. When the train blows up, we know where it is, the immediate question is what is on it? A few months ago a train jack-knifed in New Mexico while in a secure convoy under GPS control. It took 3 1\2 hours to find out what the cargo was..How about nuclear detonators?

Critique Page 4

Page 29 under DOT

DOT opposes the SYSTEM because they gave ABSOLUTE control to the chemical industry on March 13, 1980 in the Statement of Formal Recognition.

0 Existing information system: The Emergency Guide Book is published every three (3) years with 300 to 500 new chemical compounds coming on line every year. This means there could be as high as 1500 unknown chemicals in the pipeline that first emergency responders would have no access too. The only way to make the information available, immediately at the incident site, is through the System which has a computerized telecommunication network to make the information available within seconds.

0 Relating to death from hazardous cargoes: very questionable conclusion, need specifics as Cindy Douglas Director of FSPA letter to Doug Applegate stated not required to keep records. Communication link by voice telephone. By by-passing the NRC, the legal repository of all hazardous incidents, nor records have been maintained. The Kansas City death of six fire fighters directly attributable to lack of implementation of three Federal laws, HMTA, CERCLA, and SARA Title III.

0 False assumption because penalties are severe for failure to comply, and system has built in methods to catch perpetrators.

0 A stupid comment, as every time cargoes change to another carrier manifests change with them, close one open another. If carriers did not change manifests and destinations, think of the chaos that would result. The VHS tape showed the verification cross check system in operation to eliminate entre errors.

0 Blatant misrepresentation: Chemtrec has no records as to number of shipments per day, year etc., but the accepted round number is 500,000 per day. The $12 fee is not accurate for the fee would be established in negotiations with the Secretary of DOT. however if we use the $12 number x 313days x 500,000 ship.per day = $1,878,000,000 per year. $1.9 billion is not $12 billion as recorded on page 30.

I had one of the major accounting firms give me the amount of money being written off as business expense to generate a manifest, without names of the client, but operating in the chemical industry. The mean average cost per manifest was $97. Now $97 x 313days x 500,000 ship. per day =$15,180,500,000 per year. Using our system, industry would save $13,302,500,000 per year. Now that $13 billion dollars saving would become taxable income, and a pure joy to the Treasury Department.

So that there would be disagreements as to true costs, I asked the TRB, in the course of their study, to do the country a big favor by ascertaining a mean average cost per manifest to be used in any further negotiations. I asked them, through their investigation, to obtain from the Chemical Manufacturers Association (CMA), ten certified costs, without company identification, of generating a manifest as being written off on their IRS tax forms. I also advised them that it would be unlikely that they would receive that data. I told them by taking the mean average of these ten costs, we would have a fairly viable figure as to an acceptable manifest fee to be negotiated with DOT. I have not read the results in SR 239, so for whatever reason, the TRB failed to do this service for mankind.

I must break off at this time in the critique I agreed to do for you, so that I might finish my written testimony. I will continue as time permits.

Responses to questions on Page 24 Sec.25 IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEM

(1) The system has already been established, tested and is stored in a demonstration mode on the Martin Marietta Comcary telecommunication network computers. The system has been established by a private entity, Source Data Network, and will be operated as a private entity under contract with the United States.

(2) There will be no (0) cost for establishing the system or center, as both have already been bought and paid for by the private sector. The maintenance and operating cost will be derived from a per manifest fee to be negotiated with the Secretary of Transportation. Penalties for non-compliance are well defined in H.R. 2584 of the 101st Congress.

(3) No financing required and operating and maintenance cost shall be derived from a per manifest fee. (user fee See #2.

(4) Will bring the Secretary of Transportation in compliance with the HMTA of 1974, CERCLA and SARA Title III for the first time since the passage of these laws.

(5) Only those who need know, police, fire, emergency responders and federal officials all of whom shall have access by security code of various deviations.

(6) Martin Marietta has operated the highest classified type of systems from the most secured of facilities.

(7) Those determinations to be made by DOT, EPA or whom e the laws designate as they do today.

(8) The operator transmits data on federally required forms, by individuals held liable for their input into the system, and federal emergency response systems and data. There is to be no liability to the operator, as there is none to any telecommunication system.

(9) Data would be immediate, before carrier leaves the loading area utilizing the Universal Manifest Form with the additional question as to the number of the carrier, license tags, rail car number etc.

(10) Civil and criminal penalties are well defined in H.R. 2584 of the 101st Congress.

(11) All methods of communications will have access to the main frame computers including the introduction of Cellplexus, a computerized work station that can operate on AC\DC, battery and 12 volt utilizing hardline (fiber optics), cellular where available, and satellite, because the system has its own directional antennae. Access to data bases can be accomplished from any location on earth.

S Source Data
D
N Network

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BRIEFING PAPER ON THE SOURCE DATA NETWORK (SDN) SYSTEM

The SDN SYSTEM will provide and maintain for the nation, WITHOUT TAX DOLLARS, a secure, proven "computerized telecommunication central reporting and data center. It will be able to provide the law enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials" as mandated by CONGRESS when it passed the TRANSPORTATION ACT OF 1975 (P.L. 94-580).

The ACT declared the policy of CONGRESS to "improve the regulatory and enforcement authority of the SECRETARY of TRANSPORTATION to protect the NATION adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce".

In 1984 both the SENATE and HOUSE extended the law to permit private entities to operate and maintain the DATA CENTER described in the TRANSPORTATION ACT OF 1975 (98th CONGRESS Report 98-78 SENATE and the HOUSE Report 98-774). As of this date, the mandate of the CONGRESS has yet to be fulfilled. Former SECRETARY of TRANSPORTATION SKINNER, during his tenure as SECRETARY, detailed in depth, requirements as to what capabilities the CENTRAL REPORTING and DATA CENTER should entail in order to reflect state-of-the-art technologies. yet he too failed to fulfill the Congressional mandate by acquiescing to the status-quo of the effected chemical industry.

MOVING AMERICA

NEW DIRECTIONS, NEW OPPORTUNITIES

A STATEMENT OF NATIONAL TRANSPORTATION POLICY STRATEGIES FOR ACTION

SIGNED OFF BY SECRETARY SKINNER OF THE DEPARTMENT OF TRANSPORTATION

RELEASED FEBRUARY 1990

This report clearly defines, without equivocation, the needs and primary goals of the DOT and what must be accomplished to obtain these goals.

"Nothing is more important to the American people than their safety and the security of the NATION. beyond safety on the streets of their neighborhoods and communities, transportation safety concerns extend to the safety of travel on the highways and in the air, on railroads and boats and ships; releases of hazardous materials in transportation accidents; etc." Goes on to state "Federal transportation policies must address all of these concerns," safety is the top priority for the DEPARTMENT OF TRANSPORTATION."

SDN BRIEFING CONFIDENTIAL

THIS PUBLICATION EMPHASIZES THE NEED FOR THE FOLLOWING:

0 Private resources and innovation
0 Protection of the environment
0 Sophisticated computer systems
0 Telecommunications and computer networks
0 Interfacing data bases via telecommunications
0 Satellite capabilities
0 Electronic data systems
0 User fees for the private sector
0 Need to focus on innovation and technology to fulfill national transportation goals on safety and efficiency
0 Technical expertise
0 Telecommunication application to permit information exchange

The Secretary's report defines the needs that the SOURCE DATA NETWORK provides and has tried to implement over the last three years. The latest of which is to establish a "NATIONAL PROGRAM" that does precisely what is stated on page 94 of the STRATEGY REPORT, "Work with state and local agencies and volunteer organizations to identify and improve preparedness for meeting transportation requirements in the event of natural catastrophes or other natural disasters."

A NATIONAL PROGRAM

By properly utilizing the various government agencies, now held responsible for specific acts relating to both natural and man made disasters, and through the use of a nationwide telecommunication network interfaced with a computerized system that gathers and disseminates accurate, reliable, definitive information instantaneously to any location, in any weather condition anywhere in the world, the MANDATES OF CONGRESS and the legal responsibilities of the OFFICE of the SECRETARY OF TRANSPORTATION will be fully complied with. The cost to THE TAX PAYERS will be ZERO (0) and the beneficiaries will be the protection of life and property of the citizens of the nation.

The PLAYERS: federal agencies, the military, emergency response organizations, law enforcement at all levels, firefighters of all classifications states, communities, MARTIN MARIETTA and SOURCE DATA NETWORK (SDN), among others.

FEDERAL AGENCIES:

0 FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)
0 UNITED STATES COAST GUARD (USCG) AND THE NATIONAL RESPONSE CENTER (NRC)

SDN BRIEFING CONFIDENTIAL

0 UNITED STATES CORPS OF ENGINEERS

PRIVATE OPERATING ENTITIES:

0 MARTIN MARIETTA (both national and international telecommunication network coupled to redundant computer data banks)
0 SOURCE DATA NETWORK (total software package coupled to the CELLPLEXUS communication system)

RECIPIENTS OF DEFINITIVE DATA IN TIME OF NEED ON A NEED KNOW BASIS:

0 EMERGENCY RESPONSE PERSONNEL
0 FIREFIGHTERS
0 POLICE
0 MILITARY
0 COMMUNITIES
0 STATE EMERGENCY RESPONSE CENTER
0 NATIONAL RESPONSE CENTER
0 U.S. CORPS. OF ENGINEERS

Recipients of HAZARDOUS SUBSTANCES information, by commodity, going into, and out of, communities on a thirty day basis for emergency planning purposes:

0 Over 39,000 communities (satisfies the RIGHT TO KNOW LAWS without jeopardizing industry)
0 Establishes priorities as to which HAZARDOUS MATERIALS to be equipped and trained for on a given scale (1 TO 10)

FUNDING MECHANISM FOR COMMUNITIES AND STATES:

Through a TRUST FUND *, established and administered by SDN and others, the above entities will receive ANNUALLY, when system is fully operational, approximately

0 $183,000,000 FOR 39,000 COMMUNITIES, explicitly for the training, equipping of emergency response personnel and the purchase of appropriate telecommunication equipment

0 $183,000,000 for STATE GOVERNORS for the explicit implementation of the SARA TITLE III requirements of SUPERFUND

Note:* The TRUST FUND will be funded by a surplus profit formula predicated on accepted accounting practices. A two dollar ($ 2) per manifest minimum would be dedicated to the fund from the overall cost per manifest. Example: 500,000 manifests per day @ $2 = $ 1,000,000 per day.

SDN BRIEFING CONFIDENTIAL

THE OPERATING SYSTEM

Under the auspices of FEMA and NRC, the SDN SYSTEM will properly utilize the NRC, by using the SDN "REAL TIME DATA SYSTEM" in performing the tasks of recording and responding to emergency response situations as required under P.L. 96-510 (CERCLA). This establishes the NRC as the ultimate OPERATIONAL CENTER, in conjunction with FEMA, in reacting to natural or man made disasters from point of incident, to the county, state and the NATIONAL RESPONSE CENTER. By this action, SDN initiates a nationwide seamless telecommunication system, provided by SOURCE DATA NETWORK and MARTIN MARIETTA, that utilizes hardline, cellular and satellite communications that provide positive communications at all times to transmit the required definitive information to any site regardless of location or weather conditions.

Prior to shipment of hazardous substances, the generator of the hazardous substance shall access the SDN COMPUTER MAINFRAMES by an 800 telephone number or by dedicated telephone lines, provided by MARTIN MARIETTA at no cost to the generator, and enter the required data on the already required UNIVERSAL MANIFEST FORM. The SDN system has been thoroughly tested and proven and provides a series of cross-checks that assure the information and technology is correct and tested too as entered on the manifest form. The system provides all definitive data as relates to the cargoes being transported, regardless of the method of transport, and is then instantly available to those who need know in time of need.

ONCE AN INCIDENT OCCURS THE FOLLOWING HAPPENS WITHIN MINUTES:

- The first responder accesses the central computer
- Enters the appropriate information such as trailer tag number
- Instantly he receives all data as to the cargo and how to immediately react to the situation
- He now knows the hazards involved and the procedures to be followed while
- The appropriate emergency response groups are enroute to the incident site while
- The county and state emergency response centers come on line in support of the scene commander while
- The NRC comes on line and readies the U.S CORPS. OF ENGINEERS should their expertise be required
- The system will then interface with the local demographics as to hospitals, nursing homes, schools, evacuation routes and other potential dangers that might occur etc.. (SARA title III)
- All pertinent data is available to the scene commander so that correct and expedient decisions might be made should they be necessary

SDN BRIEFING CONFIDENTIAL

- The county, state and federal (NRC) emergency response centers stay on line until the incident is secure
- The same type scenario occurs in the event of natural disasters such as HURRICANE HUGO, the CALIFORNIA QUAKE and HURRICANE ANDREW

The key to any successful response to an emergency situation must be based on instant, definitive intelligent information on which to base decisions. The SDN-MARTIN MARIETTA TELECOMMUNICATION SYSTEM coupled with CELLPLEXUS, provides that ability at any time, regardless of weather conditions and locations.

* * *

MANY BENEFITS ACCRUE TO MANY PEOPLE BUT PARTICULARLY TO INDUSTRY

- By reducing their potential liabilities by responding to incidents in minutes as opposed to hours of inaction and unknowns. Industry liability is always an unknown quantity but is always a certainty, some of which are staggering.
- By reducing potential liability by electronically certifying that their hazardous substance cargoes were delivered as manifested, particularly in the case of hazardous waste
- By eliminating thousands of man hours in converting paper manifests to computer billings
- By saving thousands of man hours on required official reports to state or federal authorities
- By reducing industries costs of manifesting by BILLIONS of dollars annually, however these savings could become taxable dollars
- By complying with community right to know laws in a satisfactory manner while protecting proprietary data
- By creating better public relations as suggested, and experienced, by UNION CARBIDE, DOW CHEMICAL, EXXON CHEMICAL MARTIN MARIETTA and others

TIMING

The system is ready for immediate implementation on a regional basis with full nationwide operation under nine months from start up.

FUNDING

NONE REQUIRED

CONCLUSION: Following hurricane Andrew, the United States Secretary of Transportation, while investigating the devastated area of Homestead Florida, called for, on national television CNN, a telecommunication system that could provide definitive data and interface the incident scene with the county, state and federal emergency response agencies to trigger when federal troops should be deployed for emergency relieve. Meanwhile FEMA was being severely

castigated for ineptness and stagnation at a time when so many were in such desperate need of help. At this exact time the Deputy Secretary of the Department of Transportation was being told personally, that such a system exists and is ready for implementation so that the aftermath of these disasters could be dealt with immediately. General Becton, during his tenure as Director of FEMA, called for such a system as herein described, but refused a number of invitation to witness demonstrations of the system. Senator Barbara Boxer chaired a HOUSE Committee hearing on the Sacramento River disaster only to be misled by members of DOT as to cause and effect of what occurred at the accident scene and how CERCLA requirements were violated and what chemicals were not required to be part of manifesting requirements. Now it has been reported by the L.A. Times of the high rate of increase miscarriages among those citizens who reside in and near this devastated area of the Sacramento River.

Technologies are immediately available to stop these deplorable conditions while complying with all mandated Federal Laws. There is no reason that they not be implemented, particularly when NO TAX DOLLARS are required.

S Source Data
D
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SUBJECT: SEPTEMBER 6, 1991 MEETING WITH THE UNITED STATES COAST GUARD EMERGENCY RESPONSE AND NATIONAL RESPONSE CENTER PEOPLE.

PURPOSE: TO BRIEF, DISCUSS AND DEMONSTRATE A PROVEN "REAL TIME" COMPUTERIZED TELECOMMUNICATION DATA SYSTEM FOR USE IN THE CONTROL OF THE 500,000 DAILY SHIPMENTS OF HAZARDOUS SUBSTANCES IN TRANSPORT,

TO DISCUSS THE IMMEDIATE IMPLEMENTATION OF A NATIONAL RESPONSE SYSTEM, UTILIZING THE UNITED STATES COAST GUARD, THE NATIONAL RESPONSE CENTER (NRC), THE U.S. CORPS OF ENGINEERS AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA),AS THE LEAD AGENCIES IN RESPONDING TO ALL NATIONAL DISASTERS WHETHER NATURAL OR MAN MADE.

TO PROPERLY UTILIZE THE NRC BY USING THE "REAL TIME" DATA SYSTEM IN PERFORMING THE TASKS OF RECORDING AND RESPONDING TO EMERGENCY SITUATIONS AS REQUIRED UNDER P.L.96-510 (CERCLA

TO ESTABLISH THE NRC AS THE ULTIMATE COMMAND CENTER IN REACTING TO NATURAL OR MAN MADE DISASTERS FROM POINT OF INCIDENT, TO THE COUNTY, STATE AND THE NATIONAL RESPONSE CENTER.

TO FINALLY FULFILL THE MANDATE OF CONGRESS WHEN IT PASSED THE TRANSPORTATION ACT OF 1974.

TO INITIATE A NATIONWIDE SEAMLESS TELECOMMUNICATION SYSTEM, PROVIDED BY SOURCE DATA NETWORK AND MARTIN MARIETTA, THAT UTILIZES HARDLINE, CELLULAR AND SATELLITE COMMUNICATIONS. POSITIVE COMMUNICATIONS AT ALL TIMES REGARDLESS OF LOCATION OR CONDITIONS.

TO ELIMINATE THE USELESS, DISRUPTIVE INDUSTRY SUPPLIED CHEMTREC SYSTEM THAT CIRCUMVENTS CERCLA AND THE NRC MISSION ESTABLISHED BY FEDERAL LAW.

NEED: IT HAS BEEN ESTABLISHED IN NUMEROUS CONGRESSIONAL HEARINGS AND LAWS PASSED, THAT THE MANDATE OF THE CONGRESS HAS NOT BEEN FULFILLED AND LIVES AND PROPERTY ARE NOT BEING PROTECTED ADEQUATELY AGAINST THE RISKS INHERENT IN THE TRANSPORTATION OF HAZARDOUS MATERIALS IN COMMERCE. THE NATIONAL ACADEMY OF SCIENCES, IN 1983, CALLED FOR A SYSTEM LIKE THE SDN SYSTEM TO BE DEMONSTRATED. THE GENERAL ACCOUNTING OFFICE (GAO) AND THE OFFICE OF TECHNOLOGY ASSESSMENT (OTA) ALSO REPORT THE INADEQUACY OF THE CURRENT INDUSTRY PROGRAM. THE 101ST SESSION OF CONGRESS PASSED P.L.101-615 CALLING FOR THE IMPLEMENTATION OF THE TYPE SYSTEM TO BE DISCUSSED, PENDING REVIEW BY THE NAS.

GOVERNOR WILSON OF CALIFORNIA, FOLLOWING THREE DISASTROUS ACCIDENTS IN HIS STATE, HAS SAID THAT THE CURRENT SYSTEM IS BROKEN AND MUST BE FIXED. WE HAVE ON AVERAGE OF THREE SERIOUS ACCIDENT PER DAY WITHIN OUR COUNTRY AND THE RATE OF SUCH INCIDENTS HAS INCREASED 46% SINCE 1985. CONGRESSWOMAN BOXER HAS HELD HEARINGS ON THE SACRAMENTO RIVER DISASTER AND THE EVIDENCE PRESENTED CLEARLY DEMONSTRATED THE INADEQUACIES OF THE CURRENT SYSTEM AND HOW FEDERAL LAWS ARE BEING VIOLATED BY BYPASSING THE NATIONAL RESPONSE CENTER.

THE SYSTEM: THE SDN SYSTEM HAS BEEN THOROUGHLY TESTED AND PROVE AND PROVIDES A SERIES OF CROSSCHECKS THAT ASSURE THE INFORMATION AND TECHNOLOGY IS CORRECT AS ENTERED ONTO THE MANIFEST FORM. THE SYSTEM PROVIDES ALL DEFINITIVE DATA AS RELATES TO THE CARGOES BEING TRANSPORTED, REGARDLESS OF THE METHOD OF TRANSPORT, AND IS INSTANTLY AVAILABLE TO THOSE WHO NEED KNOW IN TIME OF NEED, REGARDLESS OF LOCATION.

ONCE AND INCIDENT OCCURS, THE FIRST RESPONDER ACCESSES THE CENTRAL COMPUTER, ENTERS THE APPROPRIATE INFORMATION SUCH AS THE TRAILER TAG NUMBER, AND INSTANTANEOUSLY RECEIVES ALL DATA AS RELATES TO THE CARGO, THE HAZARDS INVOLVED, THE PROCEDURES TO BE FOLLOWED WHILE NOTIFYING THE COUNTY AND STATE EMERGENCY RESPONSE ORGANIZATIONS TO COME ON LINE IN SUPPORT OF THE SCENE COMMANDER. THE SYSTEM WILL THEN INTERFACE WITH THE LOCAL DEMOGRAPHICS AS TO HOSPITALS, SCHOOLS, OTHER POTENTIAL DANGERS ALONG WITH THE NUMBER OF PEOPLE WHO MAY NEED TO BE EVACUATED ETC. ALL DATA COMES UP ON THE SCENE COMMANDERS COMPUTER WHILE THE COUNTY, STATE AND FEDERAL (NRC) REMAINS ON LINE IN SUPPORT OF THE EVOLVING SITUATION. TOTAL DEFINITIVE DATA IS IMMEDIATELY AVAILABLE, REGARDLESS OF LOCATION.

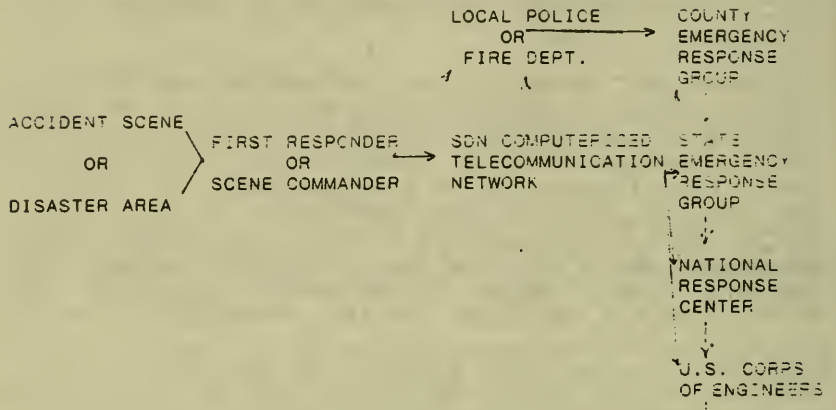
RESULTS: WITH THE IMPLEMENTATION OF THE SDN SYSTEM, LIFE AND PROPERTY WILL BE PROTECTED ADEQUATELY AS MANDATED BY NUMEROUS, REPETITIVE FEDERAL LAWS. THE NATION WILL HAVE A SEAMLESS TELECOMMUNICATION NETWORK THAT WILL BE AVAILABLE FOR ALL TYPES OF EMERGENCIES, EVEN WORLDWIDE, AT NO COST TO THE TAX PAYER AS THE SYSTEM HAS BEEN DEVELOPED BY THE PRIVATE SECTOR. ONCE IN PLACE, THE SYSTEM WILL PROVIDE OVER 39,000 COMMUNITIES A LIST OF HAZARDOUS MATERIALS ENTERING AND LEAVING THEIR COMMUNITY ON A THIRTY (30) DAY BASIS SO THAT THEY MIGHT PROPERLY TRAIN AND EQUIP FOR THE MORE HAZARDOUS OF MATERIALS RELATIVE TO THEIR IMMEDIATE CONCERNS. SDN SHALL ALSO PROVIDE, THROUGH A FUNDING TRUST FUND, APPROXIMATELY $136,000,000 ANNUALLY FOR THE TRAINING, EQUIPPING OF POLICE, FIRE, EMERGENCY RESPONSE PERSONNEL AND COMMUNITIES AND PURCHASE OF TELECOMMUNICATION EQUIPMENT IN ADDITION TO APPROXIMATELY $150,000,000 ANNUALLY TO THE STATES FOR COMPLIANCE WITH THE SARA TITLE III PROVISIONS OF SUPERFUND.

TIMING: THE SYSTEM IS READY FOR IMMEDIATE IMPLEMENTATION ON A REGIONAL BASIS, WITH FULL NATIONWIDE OPERATION UNDER NINE MONTHS FROM START UP.

CONCLUSION: SDN AND THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS HAVE SPENT FIVE YEARS IN GETTING H.R 2584 THROUGH THE CONGRESS SO THAT LIVES AND PROPERTY MIGHT BE PROTECTED. IT IS TIME TO GET THE FOX OUT THE CHICKEN COOP AND HAVE THE NRC, USING TOP TECHNOLOGY, DO THE JOB FEDERAL LAW REQUIRES THEM TO DO. THE NATION WILL BE WELL SERVED WHEN THIS COMES TO FRUITION.

A COMPOSITE DESCRIPTION OF THE SOURCE DATA NETWORK (SDN) SYSTEM UTILIZING BOTH THE MARTIN MARIETTA TELECOMMUNICATION NETWORK AND

CELLPLEXUS



THE KEY TO ANY SUCCESSFUL RESPONSE TO AN EMERGENCY SITUATION MUST BE BASED ON INSTANT, DEFINITIVE INTELLIGENT INFORMATION ON WHICH TO BASE DECISIONS. THE SDN-MARTIN MARIETTA TELECOMMUNICATION SYSTEM PROVIDES THAT ABILITY AT ANY TIME, REGARDLESS OF WEATHER CONDITIONS AND LOCATION.

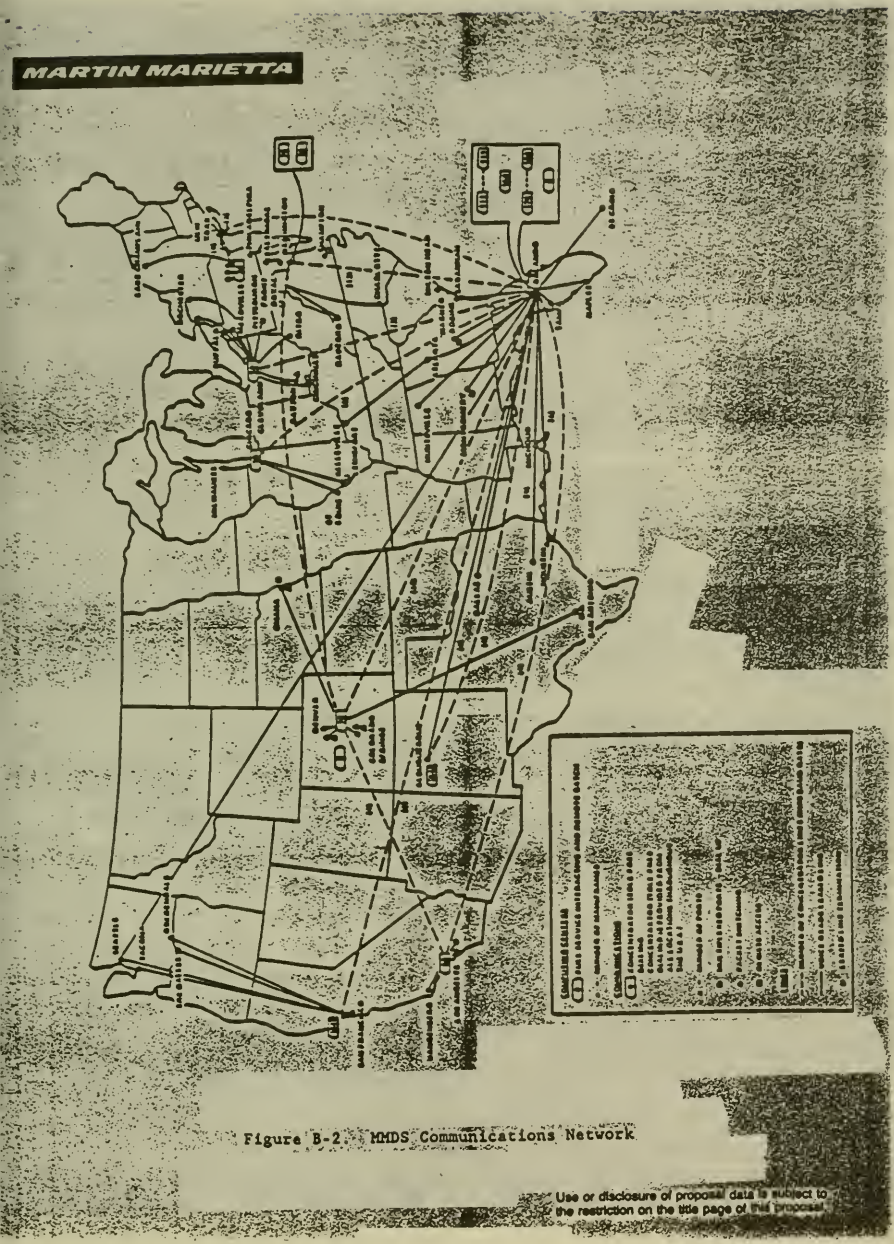
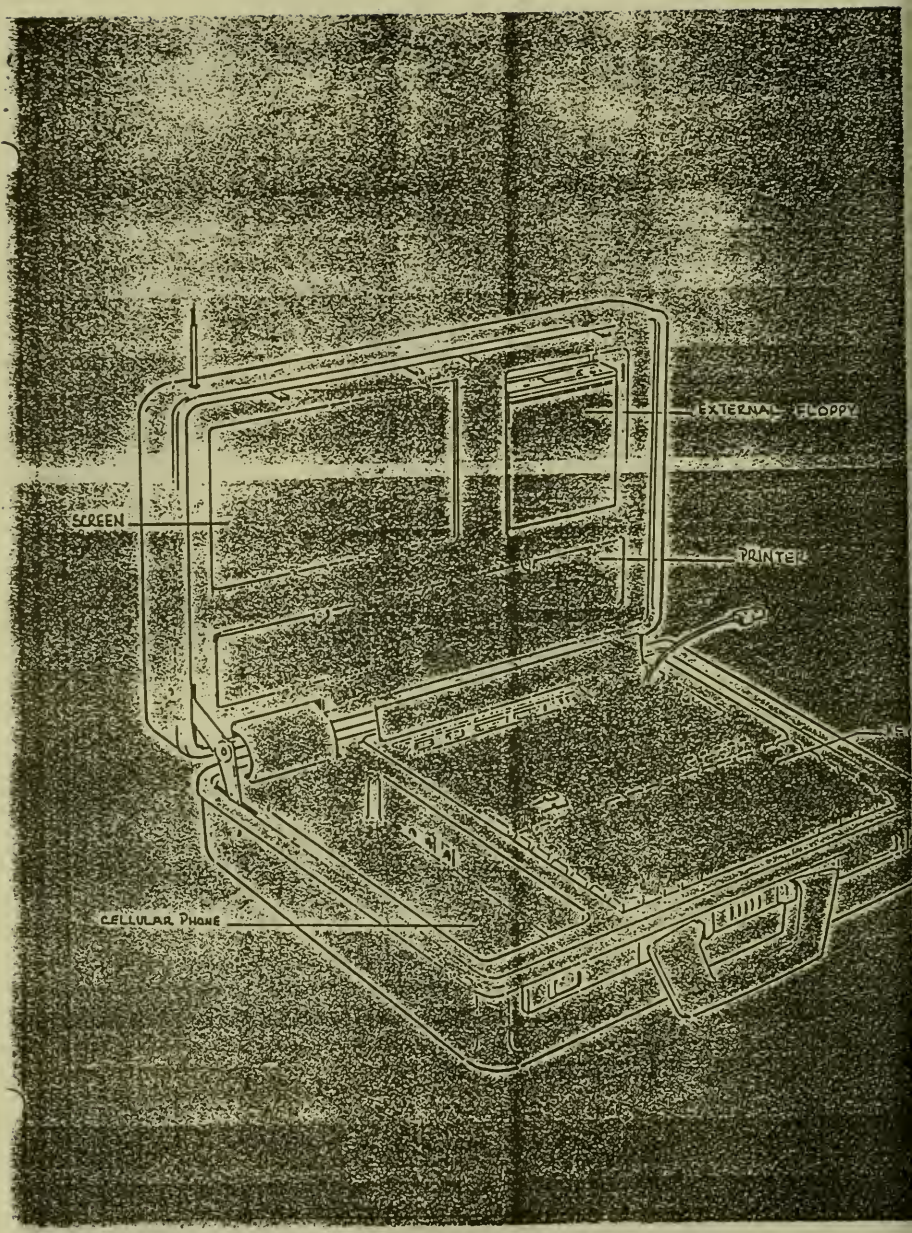


Figure B-2. MMDS Communications Network

Use or disclosure of proposal data is subject to the restriction on the title page of this proposal.


EXTERNAL FLOPPY
SCREEN
PRINTER
CELLULAR PHONE

nature. They can be handled by the people and equipment at hand. But even a minor incident may become a major incident and that major incident can tax resources to the limit, or beyond, especially if proper planning has not been done. There are numerous examples of bad decisions based on inaccurate or inadequate information--information that planning could have provided.

In order to prepare plans for a hazardous materials incident, public safety officials should know the materials commonly passing through their jurisdiction. As noted earlier in this report, such information is not usually available.

Better information is needed on the behavior of hazardous materials under emergency conditions in order to anticipate problems. In many cases, these data are available, as is the technology for delivering the data. What is lacking is an appreciation of the usefulness of the information.

Those responding to an emergency must have information immediately available on how the involved materials may react--not under normal or laboratory conditions but under emergency conditions. Emergency-response data should tell what actions can be taken to protect large numbers of people when evacuation is not possible.

Response

In response to any hazardous materials emergency, there are a few basic principles that must be kept clearly in mind. The primary objective is to minimize damage and injury. While time may be an important factor, it usually is not the paramount one.

A serious hazardous materials incident will probably be too complex for any single individual or organization to have all the information and answers. To cope with such incidents takes emergency management, and a management-team approach has the best chance of success. Unfortunately, there are several factors that may make such an approach difficult. One is a lack of trust and understanding between the various groups involved. Another is fear of liability for what may occur during the emergency.

A third factor essential in successful emergency management is unity of command--i.e., one person must be in charge and must accept responsibility for what occurs. Command must be given to that person who has the legal responsibility for the public safety of the citizens in that area. In any state that has adopted the Uniform Fire Code, that person is the fire chief.

Aside from legal responsibilities, there are other reasons why the fire chief is the logical choice. The fire department often is the first emergency-response team on the scene. The fire department will have to deal with the emergency for some time before shipper representatives or government agencies arrive, and there is an excellent chance that many critical decisions will be made prior to the arrival of this assistance.

The fire chief may not be the most knowledgeable person present on the nature of the material involved and on the technical procedures needed to deal with the problem. Thus, fire chiefs or others designated to be in charge must seek all advice and counsel available to them. They must be trained to establish a command post, to gather advisors, to weigh and consider advice, and to act on it. At the same time, advisors must realize that the commanding officer has the responsibility for public safety and for the actions to be taken.

Communication

On-scene communication, both face-to-face and over distance, is vital. Members of the teams must maintain contact with each other and with those in charge at the command post. Since transmissions over distance rely heavily on radio, it is important that planning for emergency management consider the transmitting and receiving capabilities of each team. The command post must be equipped with modern equipment to facilitate communication over distance.

Another area of communication is with the public, including the release of information to the media and giving public warning. Press and media relations are important parts of emergency scene management. The public has a right to know what is happening in their community, and accurate and responsible reporting of an incident can meet that need. Conversely, a lack of accurate information can lead to very undesirable consequences.

A major hazardous materials incident in a metropolitan area may necessitate warning thousands of people. Evacuation will be difficult, perhaps impractical, or even impossible. In spite of this, in some situations people must be warned to take some action to avoid injury. There is no practical way of giving such public warning. Broadcast media will reach those who happen to be listening or watching. Police may be able to warn those in the streets. Despite the best efforts, however, many will not hear the warning.

One answer might lie in the installation of warning devices in major areas of occupancy that could be activated by authorities. Whatever the answer, the whole issue of public warning and avoidance measures is one that needs serious consideration and planning.

Emergency Information

Those managing an incident need accurate, timely information. The information base is so complex that a concerted effort is required to provide an adequate resource file at the scene. The file must contain information in a format that is quickly understandable to people under the stress of an emergency.

The cooperative efforts of CHEMTREC and the National Response Center to provide this type of information are recognized as valuable and deserving of encouragement and support. A systematic research effort to develop a reliable data base for use at emergency scenes needs to be sustained because of the dynamic nature of hazardous materials transport. Such data base needs are not satisfied by safety data sheets or emergency-response guidebooks alone. These are useful efforts that should be continued, improved, and refined, but they do not provide sufficient information for many circumstances.

Shipping papers, placarding with material identification numbers, and labeling also contribute valuable information. They fail however, unless they are uniformly enforced. If an emergency-response team cannot have confidence that a vehicle is properly placarded, then the vehicle might as well not be placarded at all. Those at the scene must assume that the placarding information presented is correct.

In the vast majority of cases, the response to the scene of a hazardous materials incident will not involve federal response personnel. Thus, the target for response information at the scene must be local personnel. The systems developed to meet on-scene information needs must be designed for the

local responders, who have the most frequent need for such data.

RECOMMENDATION 4: DEVELOPMENT OF INFORMATION

Federal agencies with emergency-response duties should take action to develop the required information and technology to provide accurate and fast identification and estimation (both remote and on scene) of the nature and degree of hazard in hazardous materials emergencies. Congress should support research to improve evaluation of on-scene hazards and to facilitate communication between all responsible individuals and teams as well as with the general public.

A great deal of effort must go into emergency response. Much disagreement exists on what is needed. The conference committee recommends that immediate attention be given to the three areas of planning, training, and designation of who is in charge of hazardous materials transportation emergencies. Whereas in the past the federal role has been directed almost exclusively to the pre-accident actions of industry, the post-accident actions of all parties demand thorough examination at the federal level.

FINDING 5: TRAINING

There is no systematic federal approach to training in the area of hazardous materials transportation.

In a follow-up to the ten critical issues survey conducted among the invitees to the Williamsburg conference, the issue most frequently included was the need for training for the more than 2 million persons involved in all aspects of hazardous materials transportation. Such groups include the following:

1. Personnel involved in establishing regulations and enforcing them;
2. Shippers whose responsibility involves the classification, packaging, marking, labeling, and documentation of the hazardous materials to be transported;
3. Carrier personnel who have the responsibility for transporting hazardous materials in commerce;
4. Personnel who receive the materials from the carriers and must handle them in their dissemination to users; and
5. Emergency-response personnel who respond to an incident involving hazardous materials.

All of these must be trained in the proper performance of their jobs and in the regulations as they affect these jobs.

Noncompliance with regulations that govern hazardous materials transportation has been attributed by many federal agencies to a lack of knowledge and training among both carriers and shippers. Similarly, the training of response personnel has been inadequate.

Basically, all training for hazardous materials can be divided into three major categories: prevention, initial response, and reflective response.

Prevention

Prevention refers to those actions of industry and regulatory authorities to ensure that the product is properly classified, packaged, labeled, documented, and safely transported.

DOT, through the MTB and the four modal administrations, writes and enforces these regulations. Their purpose is to package the product in such a way that it will be safely contained during the expected normal rigors of transportation. The federal agencies are active in enforcing these regulations.

The training of inspectors consists of familiarization with the regulations followed by on-the-job training and experience. Inspectors can be effective immediately due to the fairly low risk involved and the fact that questions can be directed to superiors or to the MTB. It is also important to note that, besides the federal agencies, some states take an effective preventive role.

Transportation incidents that involve hazardous materials occur in proportion to the number of vehicles carrying hazardous materials compared with the total number of vehicles. In other words, the presence of hazardous materials neither adds to nor detracts from the possibility of a transportation incident.

Initial Response

Initial response refers to actions taken immediately after a hazardous materials accident or incident by industry and the various local, state, and federal response agencies, seeking to minimize and control the effects of the accident or incident.

If a transportation incident involving hazardous materials occurs, responding personnel are most often, if not always, those who would respond to any transportation incident. Their actions may be extremely critical. An incident improperly handled can become a catastrophe.

Unfortunately, first-response personnel are likely to have received minimal training in proper response to a hazardous materials incident. Technical qualifications of response personnel in larger cities usually are better than those of volunteer units, but the technical competence and hazardous materials background of the majority of police, emergency medical personnel, and firefighters are generally less than adequate. Few localities are aware of the type and quantity of hazardous materials that move by rail or highway through their area. Most are also unaware of the implications of the various physical, chemical, and toxicological properties of hazardous materials.

It is important to note here that the vast majority of initial-response personnel will never be involved in an incident in which a hazardous material is released. Also, most initial-response personnel do not have the experience, technical background, or time to prepare for the potential ramifications of a hazardous materials incident.

Training in initial emergency response is probably the least available type of hazardous materials training. It is usually not offered at the location where it will be used, nor are the persons who will be involved in its use those who attend the courses.

Since the people who must be trained rarely use the training, they cannot be expected to apply it properly in a real situation. The initial response will be made by personnel who will be poorly prepared and inexperienced in responding to hazardous materials incidents.

Yet, the record is not unduly frightening. Hazardous materials incidents do occur and, through great effort, courage, and quick thinking, are fairly well handled by those who first respond. Initial response usually is based on the anticipated worst-case consequences, even though this does not always come about. Thus, the action taken is assumed to have been the appropriate one.

Personal risk to the initial-response forces can be extremely high. Even if the hazardous material

effort should not be made to limit the number of data fields contained in the uniform hazardous waste manifest format. Obviously, the more data fields stored in a computerized system, the more complicated (expensive) the system itself, and the more sophisticated (expensive) the equipment required.

The preceding paragraphs have discussed the opportunity for the federal hazardous waste manifest requirements to be modified to enhance the application of existing computer-based technology in hazardous waste management. The more fundamental question remains, however: Should the regulations themselves be changed to embrace the use of automation as a substitute for the written hazardous waste manifest?

The trend in our economy is toward a paperless commercial system. Commercial "paper" is transferred electronically without the benefit of paper, or with paper as a confirming back-up system. If a federal agency such as DOT or EPA were to adopt a centralized automated data base for tracking and reporting hazardous wastes, would not the result be better protection for the environment and the public health and safety with a lessened economic burden on industry? Under such a system, a generator wishing to transport a hazardous waste shipment would contact a trained data entry clerk, using an interactive computer terminal, could instantly verify permit status, waste acceptability, and the variety of EPA and other identification codes associated with wastes, generators, transporters, and disposers. At the other end of the shipment, when the disposer receives a shipment of hazardous wastes, it too will contact the central data base to remove that manifest from the active portion of the file and put the manifest information in a summary file for use by interested parties.

Telephone contact is not an essential part of such a system. Large-volume users could be equipped with their own remote data entry stations. Creation of such a centralized computer data base would, of course, raise other questions:

1. Should the system be maintained by a federal, state, or regional agency or by a private corporation or by a combination of private and government entities?
2. Could such a system be developed in which a common manifest is supplemented by other legitimate state information requirements?
3. Are we prepared, as a society, to dedicate the resources necessary to enforce regulations as quickly as violations are detected by the automated data base management system?
4. Can appropriate security measures be incorporated into the system to assure that proprietary business information is not inadvertently disclosed?

SUMMARY

The principal issue addressed by this paper is the problem created by the proliferation of inconsistent hazardous waste manifest requirements by the several states. While differences in state approaches to hazardous waste management are recognized in the statutes supporting EPA regulations, differences between the states in hazardous waste manifest requirements as such threaten to wreak havoc in interstate commerce and frustrate the ongoing efforts to apply existing computer data base management technology to the problems of hazardous waste management. Finally, the issue of federal assumption of data management responsibilities with respect to hazardous waste manifests is presented to initiate and stimulate discussion on this important question.

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JOHN H GIBBONS
DIRECTOR

Congress of the United States
OFFICE OF TECHNOLOGY ASSESSMENT
WASHINGTON, DC 20510-8025

May 21, 1987

The Honorable Douglas Applegate
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Applegate:

Thank you for your letter of May 13 regarding the information system available from Source Data Network. Mr. John Mulholland, of Source Data Network, had asked me when we saw each other at a hearing last month, whether OTA would be interested in seeing another demonstration of the system. I have been expecting a call from Mr. Mulholland to make arrangements. In the meantime, a colleague at the Congressional Research Service, Dr. Paul Rothberg, has told me that he was present at a demonstration of the system, and that it had worked smoothly.

We would be pleased to take another look at Source Data Network's system, either at OTA or your offices and look forward to hearing from Mr. Mulholland.

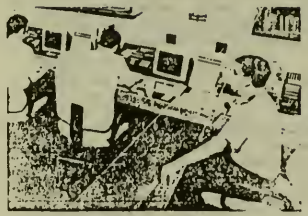
Sincerely,

Edith Page

Edith B. Page
Project Director

COMMANDER KENNETH A. ROCK
CHIEF, NATIONAL RESPONSE CENTER

NATIONAL RESPONSE CENTER
U.S. COAST GUARD HEADQUARTERS
WASHINGTON, DC 20593-0001
1-800-424-8802
(202) 426-2675

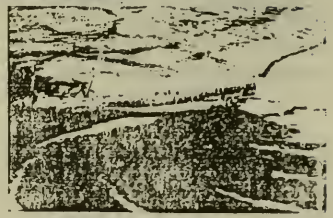


Located within the U. S. Coast Guard Headquarters Command Center Complex at 2100 Second St., S. W., Washington, DC, the National Response Center is ready 24 hours per day to assist you in the event of an emergency.

**PLEASE REPORT ALL
OIL SPILLS,
CHEMICAL RELEASES AND
RADIOLOGICAL INCIDENTS
TO THE
NATIONAL RESPONSE CENTER
PROMPTLY!**

**TOLL FREE 1-800-424-8802
(202) 267-2675 OR (202) 426-2675 IN
THE WASHINGTON, DC AREA**

National Response Center



U.S. Department of Transportation
United States Coast Guard

FOUNDATIONS

Public interest and concern for the environment and the damaging effects of oil, chemical, radiological, etiological and biological incidents continues to grow. A history of legislation has addressed these concerns. In the early 1970's the **Federal Water Pollution Control Act (FWPCA)** mandated the **National Oil and Hazardous Substances Pollution Contingency Plan (NCP)** which, in turn, established a continuously staffed and ready Federal response mechanism available for rapid reaction to any reported oil or hazardous substance incident nationwide. The **National Response Center (NRC)** was created and continues to act as the 24 hour per day report processing and response coordinating center.

The first NCP charged the NRC with receiving reports of oil spills and hazardous substance releases regulated by the FWPCA, the Outer Continental Shelf Lands Act, the Deepwater Ports Act and the Fisheries Conservation Act. In 1980, the **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**, was enacted. It provided for reporting spills and releases to the environment, established reportable quantities for hazardous substances and made it mandatory to report to the NRC any release of hazardous material or radionuclide that exceeds the promulgated reportable quantity.

The U.S. Coast Guard was tasked to staff and administer the **National Response Center (NRC)** and in 1974 the NRC became operational at USCG Headquarters. The U.S. Coast Guard personnel (watchstanders) who staff the NRC enter reports of pollution/environmental incidents, as received, directly into a computer database and immediately relay each report to the cognizant, predesignated **Federal On-Scene Coordinator (OSC)** (a Coast Guard or Environmental Protection Agency official). Each OSC then coordinates Federal, state and local response as necessary to minimize public and environmental impact. By agreement, the NRC also notifies other Federal agencies with coincident responsibilities for some types of incidents (e.g. Federal Railroad Administration, Federal Highway Administration, National Transportation Safety Board, etc.).

The OSC is responsible for quickly assessing each situation and ensuring prompt, appropriate mitigation and cleanup action. When the spiller does not undertake suitable cleanup measures or cannot readily be identified, the OSC secures contractors and mobilizes response equipment, resources and personnel to do the job. If the responsible party is not known the OSC will make money and equipment available for cleanup. If state and local response to the incident requires advice or support beyond the resources readily available to the OSC, he or she contacts the **Regional Response Team (RRT)**.

The OSC may also request the assistance of a larger team: the **Regional Response Team (RRT)**. The RRT meets regularly to drill and test geographically unique response capabilities and advisory resources. In an actual incident, the RRT provides technical and resource support for the OSC upon request. Overseeing all RRTs and providing national, technical and resource support is the **National Response Team (NRT)**. Senior representatives of fourteen Federal agencies comprise the NRT. Member agencies ensure that the NCP is current and that the Federal Response mechanism works quickly and effectively by overseeing training and preparedness, ensuring proper RRT representation and participation and by direct assistance to the OSC with advice, personnel and equipment when requested.

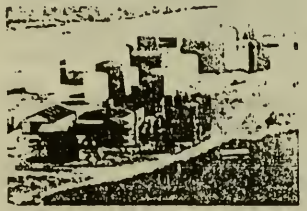
- ENVIRONMENTAL PROTECTION AGENCY
- U.S. COAST GUARD
- DEPARTMENT OF AGRICULTURE
- DEPARTMENT OF COMMERCE
- DEPARTMENT OF DEFENSE
- DEPARTMENT OF ENERGY
- DEPARTMENT OF HEALTH AND HUMAN SERVICES
- DEPARTMENT OF THE INTERIOR
- DEPARTMENT OF JUSTICE
- DEPARTMENT OF LABOR
- DEPARTMENT OF STATE
- DEPARTMENT OF TRANSPORTATION
- NUCLEAR REGULATORY COMMISSION
- FEDERAL EMERGENCY MANAGEMENT AGENCY

Member agencies of the **National Response Team (NRT)**.

REPORTABLE INCIDENTS

The NRC streamlines the Federal response mechanism by providing a single, continuously staffed location that receives and refers for action and/or investigation, all reports of environmental, etiological and biological incidents throughout the United States, Puerto Rico, Virgin Islands and Guam. By calling toll free, 1-800-424-8802 or (202) 426-2675 (toll call), any person may satisfy the Federal reporting requirements for the following incidents:

- —an oil spill
- —a hazardous chemical release
- —a pipeline accident
- —a transportation accident involving hazardous material or oil
- —a release of radioactive material
- —a release of etiological or hazardous biological material.



OIL

Section 311(b)(5) of the Federal Water Pollution Control Act (FWPCA), Section 306(a) of the Outer Continental Shelf Lands Act Amendments of 1978 and Section 18(b) of the Deepwater Ports Act of 1974, require the responsible party to notify the NRC of an oil spill or any hazardous substance release from a vessel or facility operating:

- —in or along U. S. navigable waters,
- —on the Outer Continental Shelf,
- —in a deepwater port, or
- —from a vessel transporting oil from the Outer Continental Shelf.
- —fire, breakage, or spillage of an etiologic agent occurs.

Further details can be found in 49 CFR 171.15.

OTHER

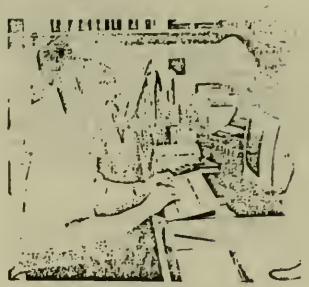
Discharges from a hazardous waste treatment or storage facility must be reported by the emergency coordinator at the facility. Abandoned dump or waste sites should be reported by anyone having knowledge of such a site.

WHEN YOU CALL

The watchstanders at the National Response Center need concise and accurate information. Be prepared to report as much of the following as possible:

- Your name, address and telephone number
- Name of the party or individual responsible for the incident
- Mailing address of the responsible party
- Telephone number of the responsible party
- Date and time the incident occurred or was discovered
- Specific location of the incident
- Name of material spilled or released
- Source of the spilled material
- Cause of the release
- Total quantity discharged
- Was material released to air, ground, water or subsurface
- Amount spilled into water
- Weather conditions
- Vessel name, railcar/truck number or other identifying information
- Name of carrier
- Number and type of injuries or fatalities
- Whether evacuations have occurred
- Estimated dollar amount of property damage
- Description of cleanup action taken and future plans
- Other agencies that you have notified or plan to immediately notify

The Oil and Hazardous Materials Technical Assistance Data System (OHMTADS) is a reference database containing chemical, biological and toxicological information on more than 1,300 chemical substances. OSC's use OHMTADS to assist in identifying unknown chemicals when only partial characteristics and/or shipping information are known and for chemical handling advice for response situations.



The Structure and Nomenclature Search System (SANSS) gives OSC's a method of identifying specific characteristics of known chemicals. Using the name, formula, chemical structure, or one portion of the chemical structure, SANSS provides detailed, technical information about that chemical.

The Marine Safety Information System (MSIS) is a marine transportation pollution and vessel documentation/inspection database managed by the U.S. Coast Guard. MSIS serves as the principle mechanism for management and field reporting of activities throughout the Coast Guard's marine safety, security and environmental protection programs. Historical information on vessels, hazardous cargoes, involved parties and other marine related data can be accessed on a 24 hour basis.

CHEMICAL

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), requires that all hazardous chemical and radiological releases, that exceed reportable quantities, be reported by the responsible party to the NRC. 40 CFR 302 promulgates reportable quantities and reporting criteria.

PIPELINE

The responsible party must call the NRC when a pipeline system failure results in release of a hazardous liquid which causes:

- —an explosion or fire
- —a loss of 50 barrels or more of liquid
- —more than 5 barrels of volatile liquid per day to escape
- —a death or injury
- —property damage exceeding $5,000.

Further details can be found in 49 CFR 195.52.

GAS PIPELINES

Releases of any toxic, corrosive or flammable gas, liquefied natural gas (LNG) or gas from an LNG facility must be reported to the NRC by the responsible party when:

- —the gas ignites
- —a death or injury occurs
- —more than $50,000 damage occurs (including cost of lost gas).
- —the release results in the emergency shutdown of an LNG facility.

Further details can be found in 49 CFR 191.5.

TRANSPORTATION

Transportation accidents involving hazardous material, including radioactive substances, must be reported to the NRC immediately by the carrier when, as a direct result of the materials:

- —a person is killed
- —a person receives injuries requiring hospitalization
- —property damage exceeds $50,000

After receiving a report, the NRC watchstander will immediately relay the information to the cognizant, predesignated, Federal OSC. Generally, the regional Environmental Protection Agency responds to inland zone incidents and the appropriate Coast Guard Captain of the Port responds to coastal zone incidents. The NRC also notifies other Federal agencies and officials when the report meets criteria of relevant statutes. For example, when transportation incidents involve pipeline, truck, train, plane or ship casualties, notifications may be made to the Federal Railroad Administration, Federal Highway Administration, National Transportation Safety Board, National Highway Traffic Safety Administration, etc. The OSC will contact the company or party responsible for the incidant and ensure that proper action is being taken to minimize impact and cleanup the spill.

COMPUTER CAPABILITIES

The NRC uses computers to find information and to assist OSC's. Systems currently employed include the following:

The Chemical Hazards Response Information System (CHRIS) is a set of reference manuals developed by the U. S. Coast Guard and made available to the public response community. CHRIS contains technical, emergency response and precautionary information on all chemicals shipped by water in U. S. commerce. The spill trajectory modeling portions of CHRIS are computerized in a system called the Hazard Assessment Computer System (HACS). Federal OSC's use HACS to get answers to specific questions during an incident response or in contingency planning for potential incidents. State and local officials may also request HACS assistance through the Federal OSC.

The Pollution Spill Trajectory Forecast System (PSTFS) helps OSC's determine probable impacts and forecasted movements of oil on water or determine the origin of unknown maritime oil spills by hindcasting the movement of the pollutant.

ADDITIONAL HELP

CHEMTREC is the Chemical Transportation Emergency Center, operated by the Chemical Manufacturers Association, established as a public service to provide 24 hour industry advice and assistance to chemical shippers, handlers and emergency responders in problem situations. CHEMTREC maintains technical information files on over 100,000 proprietary chemicals. During emergencies, CHEMTREC can provide information regarding the affects of most chemicals on persons or the environment and suggest methods for treatment, containment and control of an incident. CHEMTREC also maintains a directory of exparts and industry assistance teams that can assist in an emergency.

CHEMTREC may be reached by calling their toll-free amergency hotline:

1-800-424-9300

or for non-emergencies, call (202) 887-1255 between the hours of 9 a.m. to 4 p.m. EST.

REMEMBER: A call to CHEMTREC does not fulfill any statutory or regulatory reporting requirement of the Federal government.

A telephone call to the NRC satisfies Federal reporting requirements and alerts On-Scene Coordinators to environmental incidents in their respective geographic areas of jurisdiction.

DISTRICT OFFICES
Steubenville 614-282-9181
St. Clairsville 614-695-4900
New Philadelphia 216-343-5113
East Liverpool 216-385-6921

... AFFAIRS
CHAIRMAN
SUBCOMMITTEE ON COMPENSATION,
PENSION, AND INSURANCE

DOUG...

UNITED STATES HOUSE OF REPRESENTATIVES

May 4, 1988.

Commander Ken Rock
National Response Center
Coast Guard Headquarters
Room 2611
2100 Second Street, S.W.
Washington, D.C. 20593

Dear Commander:

For the past three years I have been actively pursuing the enactment of an effective hazardous materials emergency response system. The current archaic system does not meet the mandate of the 1974 Hazardous Materials Transportation Act and poses a serious threat to every community across the country. My purpose for writing is to obtain necessary data from the National Response Center in order to further my efforts.

I am requesting information pertaining to hazardous materials accidents and mishaps. I would appreciate it if you could furnish me with the number of incidences handled by the Center and the disposition of this incidences. I would be interested the the length of time required to handle these accidents, the cause of the accidents, and the manner utilized by the Center for identifying the materials or waste involved in these accidents. I realize that my request is quite involved, however, in order to change the current, totally inadequate system, I will need this documentation. I would appreciate a prompt reply to my request as the Committee on Public Works and Transaportation Committee will be conducting several hearings on the problems surrounding the transportation of hazardous materials and waste within the very near future and this information will be crucial to these efforts.

Thanking you in advance for your assistance, I remain

Sincerely yours,

DOUGLAS APPLEGATE
MEMBER OF CONGRESS

DA:ag

STATEMENT OF FORMAL RECOGNITION AND ATTENDANT UNDERSTANDINGS

Section 109(d)(2) of the Hazardous Materials Transportation Act, 49 U.S.C. 1808(d)(2), requires the Secretary of Transportation to establish and maintain a central reporting system and data center to provide law enforcement and firefighting personnel, and other interested persons and government officers with information and advice necessary to meet emergencies associated with the transportation of hazardous materials.

The responsibility for carrying out this requirement has been delegated to the Administrator, Research and Special Programs Administration (RSPA), 49 CFR 1.53(e). Under the authority of 14 U.S.C. 141(a), the United States Coast Guard is providing assistance, through the National Response Center (NRC), to the RSPA in carrying out this responsibility.

The Chemical Manufacturers Association, Inc., (CMA), on behalf of the chemical industry, currently maintains CHEMTREC, a well known and frequently utilized central emergency response service which provides law enforcement and firefighting personnel, carriers, and others with information and assistance for dealing with emergencies involving chemicals and trade name products and other hazardous materials.

On this date, March 13, 1980, the Administrator of the RSPA formally recognizes CHEMTREC, owned and operated by the CMA, as a source of case-by-case telephonically issued information and advice to public and private bodies and organizations and other persons confronted with chemical and other hazardous material emergency incidents. The Department of Transportation (DOT) and the CMA intend and expect that the NRC and CHEMTREC will cooperate in collectively providing the system and data center required by 49 U.S.C. 1808(d)(2).

This statement includes the understandings attendant to the formal recognition. Neither the formal recognition nor the understandings may be construed as creating, modifying, or in any way affecting either (1) the rights, duties, or obligations of the DOT or any of its agencies or the CMA or any other person, or (2) the liability of the DOT or the CMA as between themselves or to any other person.

The following understandings are attendant to the formal recognition.

1. CHEMTREC will notify the NRC promptly upon receipt of information concerning significant incidents and emergencies involving hazardous materials or hazardous substances.

2. The NRC will notify CHEMTREC promptly of any incident or emergency when:

   a. the person reporting the incident or emergency requests such a notification;
   b. the NRC decides that the person reporting the incident or emergency needs information or advice which may be available through CHEMTREC; or
   c. the NRC decides that the incident may be of interest to CHEMTREC.

3. Neither CHEMTREC nor the NRC can verify the accuracy of information or reports which they receive and must rely on data and information which they are given.

4. The responsibility of any person, under any statute, regulation, directive, or order to report a discharge, release, incident, or emergency is not satisfied by a report to CHEMTREC, even where that report is transmitted to the NRC by CHEMTREC.

5. The DOT and the CMA intend to work toward long-term goals relating to hazardous material incident and emergency response, including but not limited to:

a. the continued improvement of liaison between the NRC and CHEMTREC and with other industry and government bodies or organizations which have emergency response responsibilities and capabilities, consistent with applicable statutes, regulations, executive orders, and directives;
b. the continued improvement of communication equipment and related systems, consistent with applicable legal authority and available resources; and
c. procurement of additional resources by the DOT and the CMA to enhance the capability of their respective centers, consistent with applicable legal authority and available funding.

Howard Dugoff
Administrator
Research & Special Programs Administration
U.S. Department of Transportation

igned and acknowledged.

Robert A. Roland
President
Chemical Manufacturers Association, Inc.

20TH DISTRICT OHIO
2183 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515
202-225-6265

DISTRICT OFFICES
STEUBENVILLE 614-283-3718
ST CLAIRSVILLE 614-695-4800
NEW PHILADELPHIA 216-343-9112
EAST LIVERPOOL 216-385-5921

COMMITTEES
PUBLIC WORKS AND TRANSPORTATION
VETERANS' AFFAIRS
CHAIRMAN
SUBCOMMITTEE ON COMPENSATION PENSION, AND INSURANCE

DOUGLAS APPLEGATE
UNITED STATES HOUSE OF REPRESENTATIVES

July 28, 1988

Ms. Cindy Douglass, Administrator
Research & Special Programs Administration
Room 8410
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Douglass:

I am writing regarding your appearance on May 25th, before the Subcommittee on Surface Transportation concerning the transportation of hazardous materials and waste. I appreciate the in sight that you brought to the hearings and believe that all of the testimony presented at the hearings will be vital in our efforts to reauthorize the 1974 Hazardous Materials Transportation Act.

Because the record is still open, I felt that the best approach would be to contact you directly with the many questions that I have regarding your testimony and the role that R.S.P.A. has played in regulating the transportation of hazardous materials. Following, is a list of questions that I would appreciate the Administration responding to, these responses will be important in my efforts to protect communities from the threat that they fact today:

1. In your letter to me of May 8, 1986, you stated you met the requirements of Section 109(d)(2) of the HMTA of 1974 by a Statement of Formal Recognition between DOT and CHEMTREC; does that document require a twenty four hour operation by CHEMTREC? What section of the document defines the duties of CHEMTREC? What section of the document requires CHEMTREC to maintain records of reported incidents and accidents? How many accidents and incidents were reported to CHEMTREC in 1986-1987, how long a duration were they and what were their final dispositions?

2. Since R.S.P.A. appears to be the "lead agency," in monitoring the transportation of hazardous materials and regulating the necessary safety procedures for transporting these toxic chemicals, I am interested in knowing what the total cost to the Federal Government is for protecting the general public, emergency response, and enforcement? This would include R.S.P.A., E.P.A., F.E.M.A., the National Response Center, the Department of Energy, and the Department of Defense. I realize that an exact cost may not be possible, but an educated estimate would be acceptable.

3. In your testimony, you discuss the Hazardous Materials Information System (HMIS). The Administration's goals of this system are to expand the scope and availability of this information, expand your trend analyses and policy development; increase the education and training of users; expand the compatibility of HMIS with other computer systems; and develop new data bases and more user friendly software. I am interested in knowing when these goals can be accomplished and what the estimated cost will be to the taxpayer?

4. On page 19 of your testimony, you discuss the importance of proper emergency response in the event of an accident. You state that, "In the event of such an accident, it is vital that efforts to lessen the hazards be initiated as rapidly as possible. For this prompt response to be possible, a number of actions must be taken including:...(2). proper identification of the physical or chemical properties of the released material..." How does R.S.P.A. plan to ensure that local and state officials can meet this important criteria? CHEMTREC is only of use when the officials know the commodity and OTA has reported the problems that exist with current procedures for identifying the contents of the cargo.

5. I am also interested in your comments on the data-link between CHEMTREC and the National Response Center. How many accidents and incidents were reported by CHEMTREC to the National Response Center in 1986-1987? How often was this data-link between CHEMTREC and the National Response Center used by each organization in 1986-1987?

I realize that my questions are extensive and involved, but would appreciate a prompt response. If some of the questions require a longer study, please report back to me as much as possible. For the questions that you believe require a longer review, I would appreciate some type of schedule on when I can anticipate an answer.

Thanking you in advance for your prompt attention to this matter, I remain

Sincerely yours,

DOUGLAS APPLEGATE
MEMBER OF CONGRESS

DA:ag

US Department
of Transportation

Research and
Special Programs
Administration

The Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

SEP 12 1988

EXHIBIT
B-1

The Honorable Douglas Applegate
House of Representatives
Washington, D.C. 20515

Dear Congressman Applegate:

Thank you for your letter concerning the safe transportation of hazardous materials. I appreciate the concerns you have expressed and share your desire to move these materials safely. I am pleased to have the opportunity to provide you with information on this subject. Let me address each of your concerns in turn.

1. The statement of Formal Recognition between the Department of Transportation (DOT) and the Chemical Manufacturers Association (CMA) does not impose a legal requirement on the Chemical Transportation Emergency Center (CHEMTREC) to operate twenty-four hours a day. However, the CHEMTREC activity is a twenty-four hour a day operation and has functioned in this manner since it began operation more than 17 years ago. The CMA has assured us that it will continue to operate a twenty-four hour service so long as a need exists for assistance with chemical spills, fires, or leaks.

   The duties and services that CMA has agreed to provide are included in the CHEMTREC/DOT statement of Formal Recognition under the section listing: "The following understandings are attendant to the formal recognition." The first paragraph specifies that CHEMTREC will notify the NRC promptly of significant incidents and emergencies involving hazardous materials, and the fifth paragraph outlines long-term goals relating to the improvement of liaison, operational services, communication equipment, and other vital resources.

   There are no requirements under the agreement to maintain specific records. However, CHEMTREC forwards a monthly report to DOT that provides statistics concerning its activities. It also retains records of all incoming and outgoing calls.

   During 1986 and 1987, CHEMTREC received 104,235 calls, of which 8,766 were classified as hazardous materials related incidents. Of the 8,766 incidents, 6,586 or 75% were transportation related. Of the 6,586 incidents, about 50 were serious enough to report to the National Response Center (NRC). Through July of this year, there were 2,367 transportation incidents handled by CHEMTREC.

   CHEMTREC does not maintain records of the duration or final disposition of hazardous materials incidents. CHEMTREC's primary function is to provide technical information and assistance to a caller and not to track or record incident data. The Department of Transportation, however, has requirements for reporting hazardous materials incidents by carriers. These requirements are specified in 49 CFR § 171.15 and § 171.16.

2. The Hazardous Materials Transportation Act of 1974 provides the primary legislative authority for assuring the safe transportation of hazardous materials by all modes. Responsibility for implementation of the Act has been delegated to the Research and Special Programs Administration (RSPA) and is carried out by the Office of Hazardous Materials Transportation (OHMT). To meet this responsibility, OHMT conducts a multi-faceted regulatory program which includes the development, promulgation, and enforcement of regulations and the collection, analysis, and dissemination of hazardous materials information and emergency response training for hazardous materials accidents. Accordingly, OHMT has developed a comprehensive program which protects the general public, assists in emergency response training and provides for and coordinates regulatory enforcement activities. The FY 1988 budget for the OHMT to carry out these activities is $8.488M. The FY 1989 budget request for OHMT is $9.695M.

Computation of total costs for transportation safety not only involves the operations of a wide variety of Federal agencies, but requires working with budgetary definitions and classifications that make even an educated estimate difficult without the active participation of the agencies involved. In order to provide you with a complete response regarding the information you requested about costs incurred by other agencies, we have forwarded your questions to each agency for reply. We have asked that they respond directly to you (see enclosures).

3. Over the last several years, a number of recommendations for improvements to our Hazardous Materials Information System have been made from within the DOT and by outside organizations. Our Transportation Systems Center has been contracted to study these recommendations and perform cost benefit analyses for our use in implementing system enhancements and innovations. The cost benefit analysis portion of this study is scheduled for delivery in FY 1989. One of the purposes of the study is to estimate the costs of implementing specific recommendations in economic and time/effort terms. Until this study is completed, it is not feasible or practical to put a timetable or a cost estimate on a program which involves so many complex options, variables, and tradeoffs.

4. RSPA constantly strives to improve the capabilities of state and local officials to properly identify the physical and chemical properties of hazardous materials by a) having regulations in effect which assure the proper identification of a material, b) providing training in emergency response procedures which includes identification of hazardous material, and c) supplying an Emergency Response Guidebook (ERG) to assist responders in assessing hazards and in making better informed judgments on how to address them.

To facilitate the identification of a material, RSPA has issued a Notice of Proposed Rulemaking (NPRM), Emergency Response Communication Standards (Docket HM-126C). This NPRM proposes additional requirements for the description of a hazardous material including the technical names of principal constituents. It also proposes that emergency response information accompany each shipment and the that phone numbers of shippers be entered on shipping papers. The final rule is expected to be published later this year.

Several emergency response training initiatives underway for state and local officials are currently being sponsored by RSPA. These include regional workshops under our Cooperative Hazardous Materials Enforcement Development (COHMED) program, a series of short video tapes on the role of first responders and a full schedule of courses given by our the Transportation Safety Institute in Oklahoma City.

The Emergency Response Guidebook (ERG), developed and distributed by RSPA, provides identification and emergency response information for all regulated hazardous materials. It is used by more than 30,000 fire departments, 30,000 police departments and 15,000 other public and private response organizations. The ERG is updated and revised every three years. Since 1980, more than two million copies have been distributed throughout the emergency response community. Information contained in the ERG is intended to provide guidance during the initial phase of an incident. The guidebook provides the CHEMTREC number in bold type and instructs the responder to call CHEMTREC if assistance is needed. Because CHEMTREC has access to multiple data bases, it need not rely entirely upon the ability of the caller to identify the material by name. CHEMTREC can also identify materials by using tank car markings and motor vehicle markings, within a matter of minutes. CHEMTREC also has access to shippers of most hazardous materials including night and non-working day telephone numbers of their personnel who are available to provide immediate telephone assistance when needed.

5. Under the terms of the Statement of Formal Recognition between the CMA and RSPA, CHEMTREC notifies the NRC whenever there are significant incidents and emergencies involving hazardous materials. During the 1986-1987 time period about 50 serious incidents were reported to the NRC. The data-link was used as necessary, depending upon the seriousness and scope of the accident, the amount of

information required, and whether or not it appeared there was someone in charge at the scene to make a more detailed report to the NRC. Although the exact number of data-link contacts was not recorded, the majority of communications between the two organizations was by voice telephone.

I hope this information is helpful. Please let me know if you require any additional information.

Sincerely,

M. Cynthia Douglass

Enclosures

RESOLUTION

WHEREAS, fire fighters respond to hazardous materials incidents in greater number each year, and

WHEREAS, many fire fighters have been exposed to hazardous materials during the course of such duty, leading to cancer and other occupational diseases, and

WHEREAS, many hazardous materials incidents have not been properly reported in accordance with federal law, and such under-reporting masks the true severity of the hazardous materials problem facing fire fighters today, and

WHEREAS, many times these exposures and lack of reporting have been directly related to inadequate response from the Chemical Transportation Emergency Center (CHEMTREC), which, contrary to the belief of many fire fighters and fire departments is not an agency of the U.S. Government but a subsidiary of the Chemical Manufacturers Association (CMA), and

WHEREAS, CMA CHEMTREC is the only source of support listed in the U.S. Department of Transportation Emergency Response Guidebook (DOT ERG), which is the primary source of information utilized by fire fighters at hazardous materials incidents, and

WHEREAS, the United States Federal Government has had for several years a National Response Center (NRC) for hazardous materials incidents that has a toll free 24-hour 365 day phone number and provides direct connection to not only CMA CHEMTREC but to Environmental Protection Agency and Coast Guard Emergency Response Teams, Department of Defense Emergency Ordinance Disposal Teams, Department of Energy Radiation Response Teams and the Center for Disease Control National Institute for Occupational Safety and Health, and other agencies, and

WHEREAS, such additional support from the NRC would serve to reduce the exposures of fire fighters and assure that proper medical care is afforded those fire fighters who are exposed to chemicals, and

WHEREAS, proper reporting would assist fire departments in justifying the need for properly trained and equipped hazardous materials teams, and

WHEREAS, since the establishment of the NRC, EPA has formally asked DOT to substitute the NRC number for that of CMA CHEMTREC in the DOT ERG, and

WHEREAS, the IAFF has supported the EPA request by demanding that DOT replace the CMA CHEMTREC reference and telephone number with the NRC reference and telephone number in the DOT ERG, and

WHEREAS, DOT has thus far refused to do so, in large part based on testimony from certain chiefs who by virtue of affiliation with the International Association of Fire Chiefs (IAFC) claim to represent the fire service, but who from their testimony appear to better represent the interests of the chemical industry, therefore be it

RESOLVED, that all IAFF affiliates demand that their fire departments immediately stop utilizing CMA CHEMTREC as currently listed in the DOT ERG but instead call the NRC (1-800-424-8800) to access all organizations and agencies, and be it further

RESOLVED, that all IAFF affiliates ask that their fire chiefs inform the DOT and IAFC of this policy and demand that the IAFC join the IAFF in supporting that this change be made a part of the DOT ERG.

AMERICAN TRUCKING ASSOCIATIONS, INC.

THOMAS J DONOHUE
EXECUTIVE VICE PRESIDENT AND
CHIEF EXECUTIVE OFFICER

1616 P STREET, N.W.
WASHINGTON, D. C. 20036
(202) 797-5213

August 17, 1984

The Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
United States Senate
Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing concerning S.2892, which would amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Section 21 calls for the establishment within the Department of Transportation (DOT) of a centralized computer based system that would enable emergency response officials to access appropriate response measures through remote communications equipment. The American Trucking Associations, Inc. (ATA) believes that such a system would be of benefit to emergency response officials.

ATA is vitally interested in the safe transportation of hazardous materials. To this end, we have developed numerous training programs for the industry in an effort to ensure that hazardous materials are transported in the safest possible manner. We recognize, however, that in spite of our best efforts accidents will occur, and it is therefore essential to emergency response personnel to be provided with detailed information regarding the identity of the hazardous materials involved, and the proper steps that should be taken to reduce the potential harm posed by these materials.

ATA has worked very closely with DOT in the development of an effective hazard identification system. We have also produced an emergency response training program which has been distributed nationally to assist emergency personnel in dealing with hazardous materials incidents. The overall objective of these programs is to enable emergency personnel to identify hazardous materials that are involved in an incident and to guide them to sources of information on emergency action to take in handling the incident.

The two most relied upon sources for such information are the DOT Emergency Response Guidebook and the Chemical Transportation Emergency Response Center (CHEMTREC). The

Guidebook was developed for use by firefighters, police and other emergency response personnel as a guide for initial actions to be taken to protect themselves and the public when they are called to handle incidents involving hazardous materials. The Guidebook, which has been distributed to over 500,000 emergency response organizations, was created to function in conjunction with CHEMTREC.

CHEMTREC was established by the Chemical Manufacturers Association twelve years ago. It is a much-used 24-hour a day communications system which is accessed by phone, and provides specific information regarding every essential characteristic for more than 50,000 chemical products. Further, an important aspect of CHEMTREC is its ability to link emergency personnel to professionals in the chemical industry who can provide advice and expert assistance at the scene of the incident.

As you can see, there are today two proven and highly effective emergency response programs in operation which function in compatibility with each other, and while the system proposed in Section 21 of S.2892 would go beyond these two systems, it would also duplicate them. ATA supports the concept proposed in Section 21. Remote communications equipment will significantly enhance the capabilities of emergency response personnel to effectively handle incidents involving hazardous material. ATA, therefore, recommends that the federal government build upon the existing systems by further utilizing the data base and service provided by CHEMTREC and designing remote communication equipment which would be compatible with these systems.

One other area warrants your attention. It is the training of emergency response personnel. ATA would encourage you and your Committee to look very closely at this, to determine what additional training may be needed by emergency personnel responding to hazardous materials incidents.

We sincerely appreciate your interest in this matter, and we hope that our suggestions are helpful in the consideration of S.2892 by you and your Committee. Please let me know if you have any questions about our position.

Sincerely,

Thomas J. Donohue

cc: ~~Members of the Committee~~
not sent

AMERICAN TRUCKING ASSOCIATIONS, INC.

THOMAS J DONOHUE
EXECUTIVE VICE PRESIDENT AND
CHIEF EXECUTIVE OFFICER

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CHEMICAL MANUFACTURERS ASSOCIATION

May 28, 1986

Mr. Ron Coleman
Fire Chief
City of Fullerton
312 East Commonwealth Avenue
Fullerton, CA 92632

Dear Mr. Coleman:

CHEMTREC will soon inaugurate a new service in which chemical specific emergency response information can be electronically transmitted via modem to compatible devices (printers, personal computers, etc.). The transmission system, called HIT (Hazard Information Transmission), will be available in a test mode in June 1986. Barring complications it will be operational this summer.

This service is being added for several reasons, the most important being the desire of you and your colleagues to receive the chemical information as "hard copy", rather than by voice. We also believe that the "hard copy" will improve communications because:

- Emergency personnel need not rely on their recollection of CHEMTREC instructions during the course of the incident.
- Errors due to misspelling or mispronunciation will be greatly reduced.
- The emergency response guide may be transmitted directly to the on-scene commander, thereby eliminating verbal relay through dispatchers.

The purpose of this letter is to inform you of the service and to illicit your assistance in the testing phase of the program. We are also seeking your advice on the best way to let emergency services know about the program and to register them for receipt of the transmissions.

To that end I would like to arrange a meeting in Washington so that we can demonstrate the system and discuss operational details. We feel you are in the best position to advise us on those details. At the same time I would like to have your comments on future growth you can see for the HMI system.

I hope we can arrange a meeting in June or July. I will call your office to get the best meeting dates.

Sincerely,

Joe J. Mayhew
Director
National Chemical Response
and Information Center

cc: M. H. Estepp
J. M. Everside
W. E. Isman
M. H. McRae
C. D. Mulligan

DOT emergency response guidebook use with caution

The IAFF Department of Occupational Health and Safety wants you to be aware that the *1987 Emergency Response Guidebook*, which has recently been published by the U.S. Department of Transportation, contains erroneous information that could jeopardize your safety and health.

The IAFF is currently conducting an investigation to determine the extent of inaccurate information contained in the *1987 Guidebook*. The IAFF membership will be kept informed of the findings. Listed below are some of the initial concerns raised by the *Guidebook*.

The IAFF is extremely concerned about the misleading information provided by DOT on the protection offered by structural fire fighting protective clothing. The definition utilized by DOT states that it can be used as "protection to restrict inhalation of, ingestion of, or skin contact with hazardous vapors, liquids and solids." In many of its emergency action guides, DOT states that "Self-contained breathing apparatus (SCBA) and structural fire fighters's protective clothing will provide limited protection."

Please be advised that fire fighter protective clothing is designed to protect fire fighters against adverse environmental conditions during structural fire fighting. It is not designed for use as proximity, approach or entry clothing or for protection from chemical, radiological or biological agents. The labeling requirements of NFPA 1971: *Standard on Protective Clothing for Structural Fire Fighting* warn: "DO NOT USE FOR PROXIMITY OR FIRE ENTRY APPLICATIONS OR FOR PROTECTION FROM CHEMICAL, RADIOLOGICAL OR BIOLOGICAL AGENTS."

The DOT implication in the *Guidebook* that such limited exposure may be achieved without any health risks is erroneous. The fact is that your structural fire fighting protective clothing has never been tested to withstand even limited exposure. While under practical conditions, limited exposure to hazardous materials may be unavoidable, it should be understood that such practices could lead to acute or chronic adverse health effects.

In a direct slap in the face to the IAFF, DOT has prominently added emphasis to the importance of contacting CHEMTREC in the new *Guidebook*. The IAFF had urged DOT to list the National Response Center (NRC) at 1-800-424-8802 as the primary emergency response number. The IAFF has adopted a resolution requesting all IAFF affiliates to demand that their fire departments immediately use NRC instead of CHEMTREC. A call to CHEMTREC does not fulfill any statutory or regulatory reporting requirement of the Federal government. CHEMTREC is operated by the Chemical Manufacturers Association.

The NRC streamlines the Federal response mechanism by providing a single, continuously staffed location that receives and refers for action and/or investigation, all reports of environmental, etiological and biological incidents throughout the United States. After receiving a report, the NRC immediately relays the information to a predesignated Federal On-Scene Coordinator (OSC). Generally, the Environmental Protection Agency responds to inland zone incidents and the Coast Guard responds to coastal zone incidents. The NRC also notifies other Federal agencies and officials as appropriate. The OSC contacts the company or party responsible for the incident to ensure that proper action is being taken to minimize impact and cleanup of the spill. The NRC also offers extensive computer capabilities, including systems to identify unknown chemicals, determine the trajectory of a spill, and other information vital to emergency response.

Within its *Guidebook*, DOT recommends the use of water spray or fog for dealing with flammable gas or vapor mixtures. This is basically the same DOT recommendation found in its *1984 Guidebook*. This recommendation is in direct opposition to the warning issued by the National Institute for Occupational Safety and Health in 1985 NIOSH warned:

Fire Departments and teams responding to incidents involving flammable gas or vapor mixtures are cautioned that the use of water spray (fog) streams to prevent ignition or control flame propagation may be extremely dangerous:

- *Significant fires or explosions can occur despite the use of water spray. Under certain conditions, the use of water spray may in fact increase the severity of such fires and explosions.*
- *It is unlikely that handheld hose streams can produce a water spray with sufficiently small droplet size and uniformly high water concentrations to render inert a flammable atmosphere.*
- *The use of water spray cannot be relied upon to quench a fire in a flammable atmosphere.*

Another area of concern to the IAFF is the lack of any warnings about long-term health hazards. The health hazards cited by DOT pertain to acute effects only. DOT refuses to put information in the *Guidebook* about long-term health effects of exposure to hazardous materials.

The *Guidebook* has been criticized for inaccurate information by the National Transportation Safety Board after its investigation of the hazardous materials incident in Somerville, Massachusetts. A new report by NTSB surrounding the incident in Miamisburg, Ohio found that DOT has yet to take the necessary corrective action.

The IAFF urges all fire departments to take extreme caution when utilizing the *1987 Emergency Response Guidebook*. The IAFF recommends to seek other sources of information and contact the NRC during any hazardous materials incident.

Union Calendar No. 84

101st Congress, 1st Session - - - - - - - - - - - House Report 101-124

FIRE AND EXPLOSION IN KANSAS CITY: LACK OF INFORMATION ABOUT HAZARDOUS MATERIALS JEOPARDIZES FIREFIGHTERS

SECOND REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

JULY 11, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, July 11, 1989.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's second report to the 101st Congress. The committee's report is based on a study made by its Employment and Housing Subcommittee.

JOHN CONYERS, Jr., *Chairman.*

Union Calendar No. 84

101st Congress
1st Session

HOUSE OF REPRESENTATIVES

Report
101-124

FIRE AND EXPLOSION IN KANSAS CITY: LACK OF INFORMATION ABOUT HAZARDOUS MATERIALS JEOPARDIZES FIREFIGHTERS

July 11, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Conyers, from the Committee on Government Operations, submitted the following

SECOND REPORT

BASED ON A STUDY BY THE EMPLOYMENT AND HOUSING SUBCOMMITTEE

On June 27, 1989, the Committee on Government Operations approved and adopted a report entitled "Fire and Explosion in Kansas City: Lack of Information About Hazardous Materials Jeopardizes Firefighters." The chairman was directed to transmit a copy to the Speaker of the House.

I. Introduction

On November 29, 1988, while responding to a fire at a construction site in Kansas City, MO, six firefighters died in an explosion of hazardous chemicals they did not know were at the site. Investigations by Federal and local authorities pinpointed the absence of information about the type, quantity, and location of explosives on the site as the key to this tragedy. Several Government agencies had jurisdiction over aspects of this tragic event. On March 1, 1989, the Employment and Housing Subcommittee held a hearing to examine firefighters' right to know about hazardous chemicals which present special dangers and to learn lessons from the Kansas City explosion which could help other communities avoid a similar disaster.

Witnesses at this hearing included Representatives Jan Meyers and Alan Wheat of Kansas City, Kansas and Missouri, respectively, and Curt Weldon, chair of the Congressional Fire Services Caucus, the Assistant Secretary of Labor for OSHA, representatives of the

Environmental Protection Agency (EPA), the Bureau of Alcohol, Tobacco and Firearms (ATF), the U.S. Fire Administration, the national and local presidents of the International Association of Fire Fighters (IAFF), the president of the International Association of Fire Chiefs, and the National Fire Protection Association.

II. Background and Discussion

At 3:40 a.m. on November 29, 1988, a guard at a highway construction project telephoned the Kansas City fire department to report a pickup truck on fire, adding that there might be "some explosives" burning. The pumper companies sent to the site were told that ". . . there may be explosives." At the site the firefighters found two apparent arson fires, one in a trailer which exploded violently, killing all six men, destroying their equipment, and leaving a large crater. A fire department official described the tremendous explosion which rocked houses and shattered windows for miles around, and demolished two firetrucks: "One firetruck was a twisted hulk and as for the other, there was nothing to indicate it was ever there." A second trailer exploded 40 minutes later, leaving an even larger crater but causing no further injuries.

The U.S. Fire Administration investigation concluded: ". . . the tragic incident in Kansas City is in part the result of incomplete or unclear information." [1]

Investigations by the U.S. Fire Administration and others revealed that the trailer/magazines contained some 59,000 pounds of ammonium nitrate/fuel oil mixture, a widely used blasting agent known as ANFO. (Tr. 153.) [2] At this construction site between 10,000 and 16,000 pounds of ammonium nitrate a day were being used. The material was stored in two trailer/magazines which were closer together and closer to the adjacent highway and street than authorized in the Explosives Law and Regulation Handbook issued by the Bureau of Alcohol, Tobacco and Firearms (ATF). The trailers were not placarded with any identification of the contents, but this did not violate ATF regulations.

The construction contractor had obtained a permit for blasting from the city engineer, but the application did not require specific information. The engineer's office was not required to notify the fire marshal about permits issued. However, the construction project was a State highway project and as such it appears that the city should not have issued permits or undertaken any supervision.

Following the explosion, new procedures were implemented to clear blasting permits through the fire marshal's office. Applications now include more information about a project, its explosive materials and their storage.

A. The Roles of OSHA and EPA

In 1985 the Employment and Housing Subcommittee held a hearing and prepared a report adopted by the full Government Operations Committee, "OSHA's Failure to Protect the Health and

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[1] U.S. Fire Administration, "Six Firefighters Fatalities in Construction Site Explosion, Kansas City, Missouri," Report 024 of the Major Fires Investigation Project.

[2] Tr. refers to the printed page nos. of the subcommittee hearing entitled "Explosion in Kansas City: Need to Better Protect Firefighters," held on March 1, 1989.

Safety of Workers at Hazardous Waste Sites," (House Report 99-140, May 21, 1985). That report was a catalyst in Congress' inclusion of worker safety provisions in the Superfund Amendments and Reauthorization Act of 1986, known as SARA. SARA requires that workers involved in hazardous waste operations and those who respond to emergencies such as firefighters receive proper training and adequate protective clothing and equipment.

While Federal OSHA as such does not cover State and local government employees including firefighters, OSHA's fire brigade standard (29 CFR Ch. XVII, Sec. 1910.155) governs Federal firefighters and private sector firefighters. This standard, which covers personal equipment, training, and other safety requirements, is applicable to States with federally approved State OSHA plans. Such State plan States are required to adopt the Federal OSHA standard or one at least as effective. Recognizing that OSHA does not cover public employees in nonplan States, in section 126 of SARA, Congress directed OSHA to issue a standard to train and to protect hazardous waste workers including firefighters in the private sector, and in the Federal Government. Public employees in States with OSHA-approved health and safety programs would be covered under this Federal OSHA standard or one at least as effective. EPA was directed to issue a standard identical to the Federal OSHA standard to apply to State and local employees in non-State plan States. OSHA Assistant Secretary John Pendergrass testified that OSHA's regulation had just been issued and that "EPA and OSHA will, for the first time, be offering protection and training to virtually all of the Nation's firefighters." (Tr. 72.) James Makris, Director of Preparedness Staff, EPA, testified similarly that the complicated arrangement set up by SARA would overcome the problem of firefighters receiving different Federal protection on the basis of which State they lived in. (Tr. 107.)

B. THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986

SARA title III, known as the Emergency Planning and Community Right-To-Know Act, established a Federal-State-local structure for planners and responders. State Emergency Response Commissions (SERCs), appointed by Governors, were created. They appoint and oversee Local Emergency Planning Committees (LEPCs), which include fire services, elected officials, public health authorities, media, etc. According to Makris, there are 3,800 LEPCs existing and their plans vary enormously in quality. (Tr. 97.) Plans are submitted to SERCs for review, but Federal agencies review them only on request.

Testimony from the firefighters as well as EPA underscored the diversity of the LEPC plans. In Chicago, for example, John Eversole, Hazardous Materials Coordinator, said that the fire department took the lead in the local planning committee, even providing the coffee, postage, and meeting space in the absence of other funding. (Tr. 6.) In Kansas City, Terry Conroy, IAFF local president, said that his department's "association with the local planning community has been nil." (Tr. 6.)

C. INFORMATION ABOUT HAZARDOUS MATERIALS

The Community Right-To-Know Act (SARA title III) specified that several types of information about hazardous chemicals be sent to local emergency planners and responders: Materials Safety Data Sheets (MSDS) and two types of inventory forms concerning the same substances.

Under its hazard communication standard (29 CFR Sec. 1910.1200), OSHA requires manufacturers and importers of hazardous chemicals to prepare and distribute MSDS to accompany these products as they are distributed. They describe the components, their potential effects and symptoms, and how to deal with releases or spills. Although designed for the guidance of workers handling the materials, the MSDS are now also provided to local emergency planners and responders under SARA title III. Witnesses complained that the volume and complexity of the MSDS pouring into fire departments made them more of a burden than an aid. Lack of a standardized format for the sheets adds to the difficulty of using them in either planning or dealing with an emergency.

Application of OSHA's hazard communication standard to the construction industry was stalled by an extended lawsuit until January 29, 1989. Therefore, the site of the Kansas City explosion was not covered by OSHA's hazard communication standard at the time of the disaster.

When asked if OSHA inspectors check on whether employers have sent their MSDS to Local Emergency Planning Committees, the Assistant Secretary replied that this is an EPA regulation and not within OSHA's jurisdiction. (Tr. 90.) Subsequently, OSHA stated that it was unwilling to undertake an extensive program to train its personnel in EPA requirements, but would distribute bulletins and other EPA educational materials. OSHA also indicated that it would "encourage [its] compliance personnel, in general, to refer any apparent violation of EPA's or another Federal agency's regulations which they observe in the course of an inspection." (Tr. 92.)

SARA also requires employers who prepare MSDS to submit to local committees and fire departments inventories providing additional information about the quantities and location of the hazardous materials at their facilities. Such inventories are valuable sources of information but add to the volume of paper which in some instances overwhelms fire departments.

D. EXTREMELY HAZARDOUS SUBSTANCES LIST

The Community Right-To-Know Act also directed EPA to augment its list of extremely hazardous substances (EHS) which had been initiated under the Chemical Emergency Preparedness Program after the Bhopal, India disaster. The list is to notify communities (including, of course, their fire departments) about chemicals "that might cause immediate catastrophic loss of life because of toxicity." (Tr. 108.) Makris testified that ANFO was not on the EHS list because it does not meet complex criteria of toxicity, flammability, and volatility, although it is subject to MSDS requirements. Makris promised that EPA would reexamine what it might do about this and other chemicals which, although clearly danger-

ous, do not meet EPA's standard. He said that EPA is working on coordination of the Agency's lists. The urgent need for such consolidation was echoed by a witness who referred to the need for "a list of lists"!

E. OSHA'S FIRE BRIDGADE STANDARD

OSHA has a fire brigade standard, issued almost 10 years ago to protect primarily in-plant or fixed location firefighters. The nongovernmental National Fire Protection Association (NFPA) also issues what its representative, John Gerard, described as "consensus standards" which are updated every 3 years. (Tr. 164.) The OSHA standard, of course, is a minimum which any jurisdiction may exceed. Whether it is desirable to set optimum standards which are well above the attainable level for large numbers of fire departments is arguable.

F. CAMEO

The Computer-Aided Management of Emergency Operations (CAMEO) was described as a valuable technology, developed by the National Oceanic and Atmospheric Administration and the Seattle fire department with EPA support. It provides extensive information about hazardous materials to firefighters even en route to an emergency. The Chicago fire department got a grant which enabled it to adopt CAMEO. About 700 fire departments are using CAMEO, but many smaller departments cannot afford it. As Chief Eversole said, however, "All the CAMEOs and software or anything else is not going to help you unless there is a method of notification and that method of notification then is put into use . . ." (Tr. 65.) However, he did urge the U.S. Fire Academy to restore CAMEO training to its program. (Tr. 66.)

G. THE ROLE OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulations, designed to protect the public from accidental detonation of explosives, require permits or licenses for the import, manufacture, or distribution of explosives, and set requirements for their storage. William Earle, Regional Director, Compliance Operations of ATF, testified: "ATF neither requires nor prohibits signs in places and locations where explosives are stored. The advice we give is that if signs are used, they should be so positioned that the sign is not the target for firearms practice." (Tr. 119.) The Department of Transportation (DOT), on the other hand, has explicit requirements for the placarding of vehicles transporting hazardous materials over the highway. It has been widespread practice to remove or cover the DOT placard when a trailer or truck is parked. At the subcommittee hearing, Mr. Earle stated: "ATF supports leaving the placard in place, as long as the vehicle contains any explosive materials. The placard would direct the emergency responder to the proper response guide in the DOT Response Guidebook. ATF will incorporate this requirement into our regulations for these over-the-road storage magazines." (Tr. 119.)

In addition, Earle said that "On request, ATF provides lists of licensees and permittees names and addresses to any State or local

regulatory agency." (Tr. 119.) Providing such information routinely to local fire departments would be a wise precautionary move and compatible with the intent and procedures under SARA title III.

H. FEDERAL TRAINING FOR FIREFIGHTERS

The Administrator of the U.S. Fire Administration, Clyde A. Bragdon, discussed the National Fire Academy in Emmitsburg, MD, which provides hazardous materials training in 2-week programs for firefighters throughout the country. The training is highly regarded but only a small fraction of applicants can be accepted. The Federal appropriation which covers transportation to the school has been in jeopardy for several years. An effort to develop a second training site in Nevada several years ago was abandoned.

I. CURRENT FEDERAL EXPENDITURES

Representative Weldon said that the Fire Service Caucus has asked the Office of Management and Budget (OMB) to ascertain how much money the Federal Government is spending for fire protection. This study is expected to be completed within several months, but interim estimates are that well over $1 billion is currently being spent by the Defense Department, General Services Administration, National Park Service and many other agencies.

J. COORDINATION WITHIN THE FEDERAL GOVERNMENT

Congressional, executive branch, firefighters, and private sector witnesses all alluded to a need for coordination among Federal agencies, laws, and programs. For example, the EPA representative stated: "We think that we need to go the extra mile on providing guidance and assuring that we continue to integrate all the Federal agencies and how they discuss hazardous chemicals, hazardous risks, and how to deal with preparedness and response planning with other Federal agencies so we are not sending different messages to State and local governments." (Tr. 99.) He referred to the 14-agency National Response Team which issued a joint "Hazardous Materials Emergency Planning Guide." Other guidance on explosives and inflammables is being developed by several agencies. Representative Meyers suggested formation of an Interagency Committee under the U.S. Fire Administration to coordinate such regulations. (Tr. 18.)

III. Findings and Conclusions

1. The November 29, 1988, tragedy in Kansas City in which six firefighters perished could have been avoided had there been a system in place to provide the firefighters with clear and reliable information about the hazardous chemicals and explosives present at this particular site.

2. Local emergency personnel such as firefighters are seriously handicapped in planning for and, above all, responding to emergencies involving hazardous materials because they lack necessary information about the location and characteristics of such explosives and chemicals.

3. In some instances massive MSDS and other information flowing to fire departments may not be usable because of its volume, inconsistency, or technical complexity.

4. There are technological systems available to provide firefighters with advance information about hazardous chemicals and explosives that they may encounter when responding to a particular emergency.

5. Lack of coordination and overlapping among many Federal agencies, their various programs, requirements, and information systems lead to confusion at State and local levels among emergency planners and responders.

6. The Emergency Planning and Community Right-To-Know Act (Superfund Amendments and Reauthorization Act, title III) established a complex Federal/State/local structure to plan for chemical emergencies, but lack of funding has led to widespread noncompliance with its requirements.

7. The availability of Federal training programs for local firefighters is grossly inadequate to meet the needs.

8. Operations of Federal and State governments and their contractors are not open to preemergency inspections by local officials and such enclaves handicap planning.

IV. Recommendations

A. General

1. The U.S. Fire Administration should convene a working group of Federal agencies which issue guidelines or regulations pertaining to hazardous materials emergencies (e.g. EPA, OSHA, DOT, including the U.S. Coast Guard, ATF, NOAA, etc.) and State and local emergency planners and responders for the purpose of recommending improved coordination, consistency, and clarity in the current systems.

2. The General Accounting Office should review the implementation of SARA title III at Federal, State, and local levels. This study should include recommendations concerning appropriate roles for EPA, OSHA, FEMA, DOT, and other Federal agencies in planning for and dealing with hazardous materials emergencies. Overlapping, duplication, and gaps in Federal financial and technical assistance and training should be analyzed from the local as well as the Federal perspective.

3. Without waiting for the GAO report and its possible implementation, the National Response Team or other existing interagency body should move to coordinate the massive Federal funds now being spent on fire protection programs with local emergency plans.

4. Legislation by Congress is needed to permit local emergency planners to inspect Federal facilities and contractors for the purpose of preemergency planning.

5. Congress should authorize and fund two additional fire academies to augment the valuable training of firefighters which is now available on a limited scale only at the National Fire Academy in Emmitsburg, MD.

6. Emergency planners at all levels should give increased attention to involving industry in supporting emergency planning and response.

B. OSHA

1. OSHA should initiate a review of the form and uses of Materials Safety Data Sheets (MSDS), including input from Federal agencies such as EPA, employers, workers, and local emergency personnel. Small and volunteer fire departments as well as larger ones should be consulted. A primary goal should be making information about hazardous substances readily usable by nontechnically trained persons.
2. OSHA inspectors should routinely verify that copies of MSDS are being sent to Local Emergency Planning Committees (LEPCs). If they have not been sent, OSHA should notify the EPA.
3. OSHA should play an active role in the U.S. Fire Academy curriculum development and training programs.
4. OSHA should update its fire brigade standard to reflect technological and other developments of the past decade.

C. EPA

1. As resources become available, EPA should review and make recommendations concerning all State and local emergency plans, rather than doing so only on request.
2. EPA should press State Governors to push for local emergency plans from some 1,900 LEPCs which have not submitted them to date. Congress should consider giving EPA some direct responsibility for overseeing the operations of LEPCs.
3. EPA should initiate steps to add the Bureau of Alcohol, Tobacco and Firearms (ATF) to the National Response Team.
4. EPA should expedite publication of the next comprehensive Federal agency guidance manual which should include explosives and inflammables information. It should also expedite its proposed title III list consolidation and development of criteria for adding substances to the Extremely Hazardous Substances (EHS) list.

D. ATF

1. ATF should routinely send copies of licenses and permits to SERCs and LEPCs, not merely when requested.
2. AFT should promptly change its regulations to direct that placards required by the Department of Transportation for highway transportation of explosives remain on storage magazines when they are stationary.

V. Conclusion

Fighting fires is an extremely dangerous job. Smoke, flames, collapsing buildings, and falling ladders are normal dangers that firefighters are subjected to every day. These are dangers that firefighters recognize and understand.

The vast array of hazardous chemicals found in the workplace today presents unprecedented risks. Firefighters are summoned when trucks carrying hazardous materials overturn on highways,

when chemical wastes leak from storage tanks, and when fires or explosives involving special hazards occur.

Firefighters and other local responders are seriously handicapped by the lack of clear and reliable information in planning for and responding to fires and other emergencies involving hazardous materials. By walking unknowingly into fires in which hazardous chemicals are present, firefighters are needlessly being put in double jeopardy. There are technological systems available to provide firefighters with advance information about hazardous chemicals and explosives that they may encounter when responding to a particular emergency.

There is inadequate coordination among the hodgepodge of Federal, State, and local agencies and programs which regulate hazardous chemicals and explosives. Federal funding does not match Federal requirements, causing widespread noncompliance at the local level.

Quantities of information about hazardous materials are available but frequently such information is not in a form which is useful to firefighters. The needs of local, operational personnel should be considered in revisions of Federal reporting and other requirements. The availability of Federal training for firefighters, particularly in combating hazardous materials emergencies, should be significantly increased.

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THURSDAY, JANUARY 26, 1989 / PAGE B5 The Washington Times

FEDERAL REPOR

Photo by Carlos G. Cruz-Pre Washington Times

Senior executives cited by their association include (from left) Peter L. Basso Jr., National Endowment for the Arts; Steven T. Schanzer, Defense Intelligence Agency; Glenn W. Burton, Department of Agriculture; Alan I. Roberts, Department of Transportation; and William F. Ballhaus Jr., NASA.

Senior executives honor 6 colleagues

By Dan Vukelich
THE WASHINGTON TIMES

Six members of the Senior Executive Service received awards from their colleagues yesterday for improving federal efficiency in fields ranging from defense intelligence to turf-grass research.

The awards were given by the Senior Executives Association, a professional group representing the government's 6,200 SES members. The ceremony was held at the National Press Club following a breakfast address by former General Services Administrator Terence Golden.

Awards for "Executive Achievement" were given to Peter Basso Jr., deputy chairman for management, National Endowment for the Arts; Steven T. Schanzer, deputy director for information systems, Defense Intelligence Agency; and Alan I. Roberts, director, Office of Hazardous Materials Research and Special Programs Administration, Department of Transportation.

Awards for "Distinguished Executive Service" were given to William F. Ballhaus Jr., acting associate administrator for aeronautics and space technology, NASA; Glenn W. Burton, supervisory plant-research geneticist, Forage and Turf Research Unit, Department of Agriculture; and Gordon F. Negus, executive director, Defense Intelligence Agency.

Mr. Golden, who left government last March, said he saw two myths destroyed during his tenure: That government can't get anything done and that the Civil Service is an unmanageable bureaucracy.

Mr. Golden said none of his goals, including reducing the size of GSA by 37 percent, could have been accomplished without the help of the SES, career executives who serve as an interface between the president's 3,000 political appointees and the 2.2 million civil servants asked to carry out his policies.

Carol Bonosaro, president of the SEA, said award winners were chosen from among a field of 60 nominees by a committee of private-sector businessmen headed by Mr. Golden.

Executive Achievement Awards were given for measurable efficiency and effectiveness improvement, impact in the national or international arenas, personal leadership, and innovation and duration of benefits from innovative work, Mrs. Bonosaro said.

Distinguished Executive Service awards were given for sustained superior performance over years of service, variety of achievements, complexity of assignments, national or international impact, professionalism and personal integrity and dedication to public service, she said.

In three years, 18 executives have won the awards from a field of 200 nominated by their agency heads. Here is a description of the winners' accomplishments:

• Mr. Basso is cofounder and first chairman of the Small Agency Council, a voluntary management association that helps agencies with fewer than 6,000 employees with their management problems without having to reinvent the wheel.

• Mr. Schanzer singlehandedly transformed the DIA's $1 billion information system in 15 months from one that was merely sufficient to the one that is acknowledged to be the best in the U.S. defense intelligence community. Savings through his computer consolidations and other changes are estimated at $35 million through 1993.

• Mr. Roberts developed a DOT regulatory program for the transportation of hazardous material that balances risk avoidance and economic viability. He led the effort to take regulatory action following the poison gas disaster in Bhopal, India, and developed the most widely used guidebook for rescuers responding to hazardous materials emergencies.

• Mr. Ballhaus developed computer codes for transonic flow simulation, revolutionizing aerodynamic design for NASA. His vision led to widespread applications of computational fluid dynamics, helping him to advocate successfully a numerical aerodynamic simulation project.

• Mr. Burton has developed 43 improved pasture, forage and turf grasses now in use throughout the southern United States and the tropics. His research for USDA has stemmed soil erosion and aided in world food production. Its value has been estimated at more than $3 billion annually.

• Mr. Negus tailored intelligence analysis for policy developments on DIA's behalf for the Vladivostok arms limitations accord and for SALT II. He performed an in-depth study of the U.S.-Soviet strategic relationship and assisted the U.S. Joint Chiefs of Staff in developing future arms control policies. He also negotiated a new intelligence exchange program with Great Britain.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

ALFRED K. WHITEHEAD
President

VINCENT J. BOLLON
Secretary-Treasurer

EXHIBIT
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May 25, 1990

The Honorable Samuel K. Skinner
Secretary of Transportation
Nassif Building
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Skinner:

I am writing you to express my disappointment over your Department's most recent letter to the Chairman of the House Public Works and Transportation Committee Chairman Anderson, concerning the Hazardous Materials Transportation bill, HR 2584, introduced by Representatives Douglas Applegate and Sherwood Boehlert.

In the letter drafted by DOT General Counsel, Phillip D. Brady, you have misrepresented the bill, the bill's intent and facts and figures about the bill. This letter has placed the United States Department of Transportation on the side of the chemical industry in waging a campaign of misinformation against legislation designed to protect the lives of fire fighters and police officers and the communities they serve.

For the 180,000 members of the International Association of Fire Fighters, this issue is not a matter of money, it is a matter of life and death. Your Department continues to support a hazardous cargo identification system that doesn't work and costs industry billions of dollars annually. Even the American Trucking Association admits the placard and manifest system doesn't work.

Mr. Secretary, I again ask you to meet personally with me to discuss the fire fighters' hazardous materials transportation bill and why it is needed by the nation's fire fighters, police officers and emergency responders.

I await your reply to my request for a meeting.

Sincerely,

Alfred K. Whitehead

Alfred K. Whitehead
President

1750 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006 • (202) 737-8484 • FAX (202) 737-8418

NEWS FROM FIRE FIGHTERS
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PHONE 202/737-8484

FOR IMMEDIATE RELEASE:
May 29, 1990

FURTHER INFORMATION:
George Burke - 202/737-8484
(HOME) - 703/354-3299

DOT SPREADING MISINFORMATION ON HAZMAT TRANSPORTATION BILL BUT AGENCY IGNORES EFFORTS BY FIRE FIGHTERS TO MEET ON ISSUE

WASHINGTON -- U.S. Department of Transportation officials have sided with the chemical industry in waging a campaign of misinformation against legislation sponsored by nearly 200 members of Congress to create a computerized data bank to help emergency personnel identify shipments of hazardous materials in the event of an accident, International Association of Fire Fighters President Alfred K. Whitehead said today.

Whitehead also said that Department of Transportation officials, including Transportation Secretary Samuel Skinner, have ignored repeated requests from the International Association of Fire Fighters for a meeting to discuss the bill, the issue, and its impact on fire fighters and other first responders. "High ranking DOT officials are quick to criticize the legislation and provide information to the Congress and the media that is misleading, but neither Secretary Skinner nor his assistants have had the courtesy of replying to our requests for a meeting."

The IAFF, which represents more than 180,000 professional, career fire-fighters, is a strong supporter of H.R. 2584, the Fire Fighters Hazardous Materials Transportation Act, introduced by U.S. Reps. Douglas Applegate, (D-Ohio) and Sherwood Boehlert (R-N.Y.). The bill has been under consideration as part of the larger Hazardous Materials Transportation Re-Authorization bill. The AFL-CIO, police organizations, groups representing truck drivers, environmentalists, and others have endorsed the bill.

As part of its campaign against the Applegate bill, DOT has been sending the media a five-page letter from DOT General Counsel Philip Brady addressed to House Public Works and Transportation Committee Chairman Glenn Anderson (D-Calif.) which strongly criticizes the measure and misrepresents important provisions of the bill.

Whitehead pointed out that the DOT letter states that the bill would require fees to be paid and reports filed for each leg of a hazardous materials shipment. In fact, Whitehead said, the bill calls for only one fee to be paid for a shipment from the point of origin to the point of destination, regardless of how many different vehicles are involved in transporting the dangerous cargo from start to finish. "DOT has grossly inflated the cost of this program by adding in factors that don't exist in the bill," he said. "Right now industry is spending billions of dollars annually to comply with a hazardous cargo identification system that doesn't work. We are not asking industry to do anything that is not required under existing law. We just want it done more efficiently via computers, rather than continuing with the current manifest and placard system which is outdated and unsafe."

Rebutting the DOT argument that a computer error could expose emergency responders to life-threatening danger, Whitehead said that fire fighters face far greater dangers under the current system of paper manifests and identification placards that are attached to vehicles transporting hazardous materials. "Fire fighters have learned through first hand experience that paper manifests are often incorrect or illegible and the federal Office of Technology Assessment estimates that more than 50 percent of the placards used on trucks are missing or erroneous," Whitehead said.

(MORE)

"Fire fighters' lives are constantly placed in grave danger because they don't have the identifying information they need to handle a hazardous materials accident safely and efficiently," the IAFF President said.

Commenting on the DOT argument that the system would not help in instances where shippers failed to file papers or misrepresented the hazardous nature of the shipment, Whitehead noted that the Applegate bill would substantially increase fines and penalties for failure to file the required information.

Whitehead noted that the DOT's strong opposition to the computer system proposal stands in stark contrast to provisions included in existing law -- the Hazardous Materials Transportation Act of 1974 -- which requires the Secretary of Transportation "to establish and maintain a central reporting system and data center so as to be able to provide law enforcement and fire fighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials." DOT has yet to establish the computerized system mandated in the 1974 law. "If DOT would implement existing law, there would be no need for the Applegate bill," Whitehead said.

The House Committee on Government Operations and the Transportation Research Board of the National Academy of Sciences have also called for new systems to provide fire fighters and other first responders with hazardous materials identification information.

Whitehead also took issue with the DOT's comments on the bill's implications on the continued competitiveness of the U.S. chemical industry in the world markets. "Since when did it become the responsibility of the DOT to worry about the chemical industry or our nation's import-export issues as they pertain to chemicals?" Whitehead asked. "I thought the DOT was responsible for transportation and transportation safety issues. Why is DOT spending taxpayers' dollars to protect the vested interests of the Chemical Manufacturers' Association?"

Whitehead charged that "DOT is echoing many of the same arguments raised by an unholy alliance of the Chemical Manufacturers Association and the American Truckers Association, which are lobbying hard to defeat the Applegate bill." He said chemical and trucking industries are afraid of the accountability that they would face under the Applegate bill because one provision of the legislation calls for flow reports which would provide local government officials with periodic data on the number of hazardous materials shipments moving through their communities and the types of toxic and hazardous materials being shipped.

"Many hazardous materials incidents currently go unreported. This bill would establish a system to ensure accurate reporting of such incidents," Whitehead said.

"For fire fighters, police officers, and other first responders, this issue is not a matter of money -- it is a matter of life and death," Whitehead said. "We will ultimately win this issue because the public is becoming more and more aware that we are not just talking about the safety of fire fighters; we are talking about the safety of whole communities.".

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NEWS FROM FIRE FIGHTERS
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FOR IMMEDIATE RELEASE:
March 8, 1990

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FIRE FIGHTERS CRITICIZE BUSH'S TRANSPORTATION POLICY FOR FAILING TO ADDRESS HAZARDOUS MATERIALS IDENTIFICATION

WASHINGTON -- The Bush Administration's new transportation policy ignores the critical need to adopt a comprehensive system for fire fighters and other emergency personnel to quickly identify the contents of hazardous materials shipments following accidents, International Association of Fire Fighters President Alfred K. Whitehead said today.

"Every year, fire fighters' lives are put in jeopardy and some die needlessly because they must respond to accidents involving hazardous materials but they don't have adequate information to identify the substances involved," Whitehead said. "The Administration's new transportation policy ignores this problem and, instead, continues to promote an inefficient and outdated identification system for hazardous materials shipments that doesn't work."

Citing a study by the federal Office of Technology Assessment, Whitehead said the current hazardous materials identification system, which uses paper manifests and placards mounted on vehicles to identify toxic and volatile substances, doesn't provide emergency workers with the information they need to handle a hazardous materials transportation incident 50 percent of the time. "To put it bluntly, the current hazardous materials identification system kills fire fighters."

Legislation supported by the IAFF -- H.R. 2584, which has the support of more than 150 congressmen -- would establish a computerized data bank to log in every hazardous materials shipment in the country. More than 500,000 shipments of hazardous substances move along the nation's roads, rails, sea, and air space each day. Hazardous materials generators and shippers would have to log the contents of their shipments into the computer system. Fire fighters and other first responders, using license plate numbers to identify the vehicle, could access the computer network in a matter of seconds to obtain data on the cargo. No taxpayer dollars would be used to finance the new private system. Funding would be derived from user fees on the generators and shippers, although those fees would be less than the costs they currently must pay. Excess funds would be turned over to the states for hazardous materials training and equipment.

"Current law already calls for the development of such a system, but Transportation Secretary Skinner has ignored that mandate," Whitehead said. "The Administration has chosen to cater to the selfish interests of the chemical and trucking industries, who have formed an unholy alliance to kill our proposal for a computerized identification system."

Whitehead said the IAFF, an AFL-CIO union which represents more than 180,000 professional fire fighters, is launching a nationwide grassroots campaign to warn the public about the serious dangers associated with hazardous materials shipments and put pressure on Congress to pass H.R. 2584.

"For fire fighters and other first responders who battle hazardous materials incidents every day, this is not a labor issue nor a matter of money -- it is a matter of life and death," Whitehead said.

FAK

vote against Wise, not least among them being that a vote for Wise "is a vote against a speedy House-Senate conference."

The transition assistance approved by the House would grant an extra six months of unemployment benefits, and up to two years of training stipends, to workers who lose jobs as a result of clean air enforcement.

The Wise amendment set a $50 million-a-year cap and a five-year time limit on such assistance, but Lent and other opponents warned that courts would ignore the ceilings and treat it as just another entitlement program.

Lent also predicted that "the precedents set by enactment of the Wise amendment are enormous. For the first time, environmental benefits will be held hostage to labor protection. In the future, how will we in the Congress be able to pass environmental legislation and not include labor-protection provisions for industries adversely affected by that legislation?"

As an example of how "illusory" the caps might prove, Lent estimated that compensating coal miners alone might run as high as $475 million, based on an administration estimate that the clean air amendments will reduce employment in high-sulfur mining by 12,800 jobs during the 1990s.

Extension of labor protection to other industries is precisely what worries the ATA, said Schaeffer, noting that resource recovery legislation regulating the disposal of used oil and old tires, among other items, could also end up with an expensive transition assistance provision if the precedent of the Wise amendment becomes law.

But President Bush is apparently dead set against transition assistance, according to a letter sent to House Speaker Thomas Foley shortly before the House voted on the clean air amendments. Signed by John Sununu, White House chief of staff, and William K. Reilly, Environmental Protection Agency administrator, the letter bluntly warned that if the Wise amendment was adopted in its proposed form, "the president's senior advisers would recommend that the bill be vetoed."

No such veto threat overhangs H.R. 1465, although the House double-hull offer "finalized" May 25, according to a spokeswoman for Jones, may not please the Bush administration that much.

Jones' office declined to release details of the final offer, on the grounds that Senate conferees should get a chance to read it before it is made public. However, a House staffer close to the issue said the House insists that the Senate agree to require double bottoms for petroleum carriers without waiting for a study of the matter. The administration prefers a study.

As to just when double hulls will be required, or when the phase-in should begin, the staffer said "tonnages and years" in the House proposal were "not solid" and will have to be worked out in conference.

— by Don Winter

DOT spreading 'misinformation' on haz-mat bill, firefighters say

by John D. Schulz

The Department of Transportation is waging "a campaign of misinformation" while siding with the chemical industry and against a bill that would create a computerized data bank to track hazardous materials shipments, the International Association of Fire Fighters has charged.

The IAFF, which represents 180,000 firefighters, is a strong supporter of H.R. 2384, sponsored by Rep. Douglas Applegate, D-Ohio.

DOT strongly criticized the bill recently in a letter from General Counsel Phillip D. Brady to Rep. Glenn M. Anderson, D-Calif., chairman of the Public Works and Transportation Committee.

The DOT counsel said there was "no record" of any haz-mat accident in the past two years where lives could have been saved by the use of a computer data base. Creation of such a data base would cost shippers an estimated $12.3 billion annually in compliance costs, Brady estimated.

Alfred K. Whitehead, president of the IAFF, disputed that figure and added, "Right now, industry is spending billions of dollars annually to comply with a hazardous cargo identification system that doesn't work."

Another reason the government is opposed to such a data bank is that it would expose the routes of the approximately 500,000 hazardous materials shipments each day by truck and rail, one official with the IAFF charged.

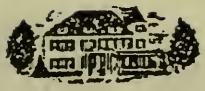
"That's the real reason DOT is opposed. If the public knew how many haz-mat shipments were routed through their neighborhoods, there would be a serious backlash," said the official, who asked not to be identified.

The firefighters claimed the Applegate bill does not ask the transportation industry to do anything that is not currently required under existing law.

"We just want it done more efficiently via computers, rather than continuing with the current manifest and placard system, which is outdated and unsafe," Whitehead said.

Rebutting the DOT argument that a computer error could expose emergency responders to life-threatening situations, Whitehead said that firefighters face far greater dangers under the current system of manifests and placards that are attached to haz-mat vehicles.

"Firefighters have learned



THE VICE PRESIDENT'S HOUSE
WASHINGTON, D. C. 20501

January 7, 1991

Dear Mr. Mulholland:

I was pleased to hear of Source Data Network's proposal to develop a computerized telecommunication system to aid in the response to accidents in the transport of hazardous materials. You are to be commended for putting so much thought into your proposition.

As my staff has explained to you in the past, I cannot endorse or in any way support pending legislation or potential commercial contracts with government agencies. I can, however, forward your correspondence to FEMA and the Department of Transportation for their information.

Additionally, you may wish to contact the Chemical Manufacturer's Association (CMA). CMA developed the Chemical Transportation Emergency Center (CHEMTREC) in 1971 to help respond to accidental spills of hazardous materials and now also conducts training for first responders. I am told CHEMTREC's toll-free information line receives an average of 500 calls per day -- mostly non-emergencies, thank goodness. Approximately 14,000 companies participate and cooperate with CMA's programs.

Thank you again for writing, and best of luck in your future endeavors.

Sincerely,

Mr. John F. Mulholland
President
Source Data Network
12300 Twinbrook Parkway, Suite 500
Rockville, Maryland 20850

A – HAZARDOUS WASTE/MATERIALS AUTOMATED REPORTING SYSTEM

Contact Maria Snyder, 301/926-5412. Army Materiel Command seeks suppliers of general purpose automated hazardous waste/hazardous materials tracking and reporting systems. The desired system must operate in a multi/single user-single site mode, preferably on a minicomputer using a relational data base management system with standard query language. The system must be software release controlled and supported by vendor. The system should be capable of addressing the essential requirements of Department of Defense research, development, and manufacturing operations relative to hazardous material and hazardous waste data collection and reporting requirements. Interested firms must submit two copies of the information requested in Note 25. Since no other information available for release regarding this procurement at this time, telephone requests will not be honored. This synopsis is for info and planning purposes only, does not constitute solicitation for bids or proposals, and is not to be construeds as a commitment by the govt. The govt. will not pay for any effort expended in responding to this synopsis. Responding firms should indicate wheather they are or are not a small business. See Note 25. (056)

EXHIBIT V

Federal Emergency Management Agency
Office of Acquisition Management & Ins. Support Division
500 C Street SW Room 731
Washington, DC 20472

EXHIBIT W

STUDY OF FIREFIGHTERS FATALITIES
Solicitation # EMW-92-R-3900
Due 5/4/92

POC Rhonda Hudson Contract Specialist (202) 646 3842 or Patricia A. English, Contracting Officer (202) 646-4257. The Unites States Fire Administration (USFA) is dedicated to reducing the tragic toll of fire fighting deaths resulting from line of duty situations. As a result, an RFP will be issued requesting that all deaths to fire service members in calendar year 1992 be identified and the situations resulting from the fatalities be analyzed and reported. All requests for an RFP package must be in writing and shall be received within 15 days after the date of publication of this synopsis. Telephone requests will not be honored. To expedite request for solicitation please furnish a self addressed gummed label. Include the full solicitation at the bottom of the label. Refer to Synopsis No. 008.

... Support Div., 500 C Street, S.W
Room 731, Washington, D.C. 20472

B -- STUDY OF FIREFIGHTERS FATALITIES SOL EMW-92-R-3900 DU 050492 POC Rhonda Hudson, Contract Specialist, (202) 646-3842 or Patricia A. English, Contracting Officer, (202) 646-4257. The United States Fire Administration (USFA) is dedicated to reducing the tragic toll of fire fighter deaths resulting from line of duty situations. As a result, a RFP will be issued requesting that all deaths to fire service members in Calendar Year 1992 be identified and the situations resulting from the fatalities be analyzed and reported. All request for RFP package must be in writing and shall be received within 15 days after the date of publication of this synopsis. Telephone request will not be honored. To expedit request for solicitation please furnish a self- addressed gummed label. Include the full solicitation number at the bottom of the label. Refer to Synopsis No. 008. (0097)

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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

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General President

VINCENT J. BOLLON
General Secretary-Treasurer

TESTIMONY BEFORE THE

HOUSE SUBCOMMITTEE ON SURFACE TRANSPORTATION

ON THE

REAUTHORIZATION OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT

JUNE 8, 1993

BY

FREDERICK H. NESBITT

DIRECTOR OF GOVERNMENTAL AFFAIRS

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Introduction

Mr. Chairman, my name is Frederick Nesbitt and I am the Director of Governmental Affairs for the International Association of Fire Fighters, AFL-CIO. I appear before you today on behalf of the nation's nearly 200,000 professional fire fighters to offer our views on the issue of hazardous materials in transportation.

First, allow me to offer some background on our organization's perspective on this issue. Fire fighters are the first responders to virtually all hazardous materials incidents, and our members experience first hand the problems associated with inadequate information at the scene of a hazmat incident. For us, this is not an abstract policy consideration; our members lives literally depend on the effectiveness of accurate, timely information. If the wrong fire suppression technique is utilized because of inadequate information, we do not measure the mistake in lost goods, vehicles or money. We measure it in lost lives and impaired health.

Three years ago, the IAFF was the primary organization advocating replacing the antiquated placard and manifest system of identifying hazardous cargo with an automated information system. Legislation to make such a change attracted widespread support from numerous organizations and garnered over 200 cosponsors in the House of Representatives.

Two general arguments were heard in opposition to that proposal. First, some argued that the current system of identifying hazardous materials in transit works well. This argument, which contradicted the findings of several government studies of the effectiveness of the placard and manifest system, was put forward by those who have a vested interest in preserving the status quo.

The second argument, advanced by Members of Congress for whom we have great respect, was that Congress did not possess the necessary expertise to determine the type of technology best suited for identifying hazardous materials in transit. We found this to be a compelling argument, and consequently agreed to a compromise proposal which mandated a scientific study into the need and feasibility of automated identification systems to replace the current system of placards and manifests.

As you know, Mr. Chairman, this study was conducted by the National Academy of Sciences and completed in April, 1993. The two primary findings of the study fully endorse the IAFF's long-standing position on the issue of identifying hazardous cargo.

The Current Identification System

First, the NAS study substantiates our contention that the placard and manifest identification system is ineffective. The NAS research

found that in 25% of consequential highway incidents and 10% of consequential rail incidents, emergency responders were unable to obtain necessary information in a timely fashion. The data led the NAS to conclude "the existing system fails with some regularity."

What the report did not fully assess is the effect that this failure rate has on emergency responders. In reality, the placard and manifest system is even more ineffective than the NAS research implies because emergency response personnel, mindful of both the system's high failure rate and the severe consequences of incorrect actions, have become skeptical of the information they receive. Without the operational confidence of emergency responders, no identification system can function.

In addition to severely criticizing the placard and manifest system, the NAS report does offer some recommendations for improving it. Mr. Chairman, it would be a grievous mistake to assume that because some improvements are possible, that the system can be repaired. The placard and manifest system has proven to be a dismal failure, and no amount of minor adjustments will make it work. If there are modifications that would improve the system during the transition period to another type of identification system, then by all means let us do them. But please do not let such band aids distract us from the central truth that the current placard and manifest identification system must be relegated to the scrape pile as soon as practicable.

Automated Identification Systems

The second major conclusion of the NAS study is that there are technologically advanced identification systems that would dramatically improve the ability of fire fighters and other emergency responders to identify hazardous cargo. The NAS found that automated identification systems already in common use by carriers of hazardous materials would be well suited for the information needs of emergency responders. In light of these findings, it can no longer be credibly argued that automated identification and tracking systems do not exist to provide the necessary emergency response information. Indeed, one of cruel ironies of this issue is that the vital information, so elusive to emergency responders, is readily available to the hazmat carriers and shippers and is a routine part of doing business.

The enormous potential benefits of establishing a nationwide automated system led the NAS to recommend that the federal government "immediately" establish one or more start-up projects as the first step toward implementing a nationwide system.

The IAFF fully concurs that any automated identification system that replaces the placard and manifest system should be thoroughly tested and phased-in. As noted above, the key to the success of such a system is the level of confidence placed in it by emergency responders. That confidence will only come from real world

experience, and start-up projects are the best way to provide such experience.

While we endorse the concept of beginning with the start-up of an automated information system, it is imperative that this start-up be tested under a variety of conditions. The NAS discusses the option of beginning with one or more start-up projects on railroads because of the relative ease of undertaking such a test. But the issues surrounding identification of hazardous cargo differ significantly from mode to mode. As noted above, the NAS found that emergency responders were twice as likely to encounter difficulties in obtaining necessary information when responding to a highway incident than a rail incident.

Consequently, the IAFF strongly recommends that any start-up system include a test of the automated identification system's effectiveness in responding to hazmat incidents on the nation's highways.

The IAFF further recommends the involvement of rank and file fire fighters in the development and testing of the system. Mr. Chairman, it is imperative to keep in mind who it is that must utilize this system, and not allow operational decisions to be made solely by computer technicians and transportation engineers. The best way to ensure that the system meets the needs of emergency responders is to involve them from the outset. The IAFF stands ready to assist DOT

to facilitate the involvement of fire fighters, and we offer our expertise and experience in the creation of this new system.

Finally, the NAS recommends a two year start up project to develop an automated information system. Those with a vested interest in maintaining the current placard and manifest system will no doubt attempt to use this two year window in an effort to further delay implementation of a nationwide automated information system. They must not be allowed to do so. Two years is adequate time to select and get the bugs out of start-up identification system, and the IAFF urges Congress to grant the Department of Transportation full authority to promptly mandate a nationwide automated identification system, covering all modes and carriers, at the conclusion of the two-year period. Technology is developing and improving daily. It is hard to believe anyone would cling to paper placards and manifests in a day of satellite communications and advanced computer technology.

Training

While we believe the NAS study accurately reflects the problem of hazardous materials identification, there is a related area that is given only the most cursory of mentions, perhaps because the authors felt it was outside the scope of the study. No improvement in emergency response to hazardous materials incidents will be possible without vastly improved training and equipment for fire fighters and other responders.

The current hazmat training for fire fighters is wholly inadequate. Insufficient money is allocated for such training, and what little money is available is often misdirected. The hazardous materials training requirements and community preparedness mandated by SARA Title I and III are so widely ignored that any attempt to adhere to them would shut down the entire Superfund program.

In an effort to address this crisis in hazardous materials training, HMTUSA authorized a program of emergency responder training. Unfortunately, the program has seemingly been utilized for every purpose other than its intended one: training fire fighters to respond to hazardous materials incidents.

The NAS report recognized the existence of this problem, but failed to offer adequate solutions. NAS's primary recommendations in this area are (1) another government study into the problems of training emergency responders, and (2) the development of a hazmat training curriculum. Neither is needed.

Extensive studies of hazmat training programs are already available, most notably the comprehensive *Survey of Emergency Response Training Programs* conducted for OSHA by the Eastern Research Group. Moreover, the IAFF-developed curriculum for hazmat training has already been formally acknowledged by the US Fire

Administration and is currently in use by federal government agencies, all 50 states and several foreign countries.

There simply is no need for further studies or curriculum development. There is, however, a dire need for federal government support for existing programs which conduct this training. Rather than devote time, energy and money to further government studies and curriculum development, the IAFF recommends that these resources go toward the actual training of fire fighters and other emergency responders. Specifically, we urge that direct grants be made available under HMTUSA to non-profit organizations for the exclusive purpose of conducting hazardous materials response training to fire fighters and other emergency responders.

Conclusion

Mr. Chairman, HMTUSA made great strides toward creating a unified national system of regulating the transportation of hazardous materials. Today, you have the opportunity to complete the work begun in 1990 by ensuring that emergency responders have the information and training necessary to fully respond to all hazardous materials incidents. The IAFF looks forward to working with you in the coming months to achieve this goal.

I thank you for this opportunity to present our views, and would be happy to answer any questions you may have.

STATEMENT OF ROBERT L. TEMPER

TESTIMONY

ON BEHALF OF

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

BEFORE

SURFACE TRANSPORTATION SUBCOMMITTEE

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 2178, REAUTHORIZATION OF

FEDERAL HAZARDOUS MATERIALS TRANSPORTATION PROGRAMS

JUNE 8, 1993

Good Morning,

My names is Robert L. Temper. I am manager of Transportation for Mallinckrodt Specialty Chemical Company in Chesterfield, Missouri. I appear today on behalf of The National Industrial Transportation League, and serve as chairman of its Technical Regulations Committee.

The League is a voluntary association of shippers, groups and associations of shippers, and other purchasers of freight transportation services. It is the nation's oldest and largest organization representing companies of all sizes and commodities using all modes of transportation to move their goods in intrastate, interstate, and international commerce. For more than 80 years, it has been known as "the shippers' voice."

The League is, and has been, a strong supporter of federal hazardous materials transportation programs. We are dedicated to ensuring the safe and efficient movement of these commercially vital, but potentially dangerous, commodities. League members are proud of the role they played in working with the Committee in enacting the Hazardous Materials Transportation Act and related legislation.

I appear here today to express the League's support for H.R. 2178. The Department of Transportation's hazardous materials functions are a key element in assuring and improving the safety of our national transportation system. This is why the League supports H.R. 2178 and urges that the Research and Special Programs Administration be authorized to meet all of its legal responsibilities for hazmat transportation safety.

With respect to the HMTUSA, the League has and continues to participate in its implementation. Our experience with the Act has been generally very positive. It appears that the Act is creating the balanced environment we envisioned. We are especially pleased that the National Academy of Science's Transportation Research Board has agreed with the League position that a national computer system to track the movement of these commodities is not needed at this time. The League supports the TRB's recommendations including the need to assure that any system is able to accommodate of variety of current and emerging technologies as well as the funding of a test program or programs.

On the whole, HMTUSA is too new to warrant making substantial revisions to them at this time. However, we do seek the inclusion of certain minor reforms to the hazardous materials requirements so that our goals of creating the safest and most efficient system are better achieved.

These minor mid-course corrections were not anticipated when the measure was enacted almost three years ago, and addressing them now would help to ensure the continued smooth functioning of this important law. They are meant merely to facilitate compliance with current requirements and meet the President's mandate of promoting efficiency in government, and are attached to our written testimony as Appendix A.

The first proposed change affects the registration program, and involves a requirement that takes effect July 1, 1994. The requirement states that non-U.S. hazardous materials shippers and carriers have to register with the DOT's Research and Special Programs Administration even if they do not have facilities or operations within the U.S. In essence, these companies really are participating in the commerce of their own countries, but due to some interpretations of the wording in HMTUSA "causes to be shipped", there is a possibility that these companies would fall subject to U.S. registration requirements.

The League recommends that the hazardous materials registration program be amended to limit registration to those non-U.S. shippers and carriers who perform hazardous materials operations within the U.S. Non-U.S. shippers and carriers who merely place the goods in the stream of commerce would have no registration requirements. The U.S. or foreign carriers transporting these products to the U.S., as well as the U.S. or foreign companies receiving these products within the U.S., still would be subject to filing requirements so that the government would have access to information about these products. Acting now would have no revenue impact since these companies currently are not required to file.

The goal of this change is to ensure that U.S. exporters, especially chemical exporters where the U.S. has a favorable balance of trade, are not unduly prejudiced or penalized. It is meant to prevent foreign retaliation against these companies -- retaliation which could make U.S. products noncompetitive in global markets.

This reform also is needed to prevent the proliferation of unnecessary paperwork, and prevent U.S. shippers and carriers from being exposed to similar requirements across the world. These international fees and charges may not mirror the modest sums assessed by the Department of Transportation for the U.S. program. In addition, the reform would eliminate the potential for our trading partners to file GATT challenges against us.

The second proposed amendment affects the allocation of registration funds. The DOT currently is collecting registration and permit fees which are meant to underwrite the training of emergency responders for hazardous materials incidents. To assure that these funds are used for their intended purpose, the League recommends that DOT be required to report to Congress either annually or biennially on the disbursements of the registration program revenues. This report should indicate which states received training funds and for what purposes. If funds are allocated for non-training purposes, the DOT should indicate the safety benefit of the allocation.

The third reform involves the base state registration program approved last month by the HMTUSA Section 22 Task Force. Over the past two years, the public and private sectors have made significant progress in developing uniform procedures for the processing and paperwork tasks associated with state hazardous materials fees. We urge that Congress promote the implementation of these recommendations by setting a deadline by which states must adopt them, including the development of a base-state registration program. This compliance date should be after the testing of the pilot program recommended by the Section 22 task force. In addition, the state should be given transition assistance, including funding, to help facilitate voluntary compliance with the program.

It should be noted that Congress has encouraged the adoption of base–state programs. The Intermodal Surface Transportation Efficiency Act mandates the adoption of the International Registration Plan and the International Fuel Tax Agreement. The same efficiencies could result in hazardous materials transportation if the Section 22 reforms were adopted.

The last recommendation seeks a study by the Department of Transportation on the proliferation in the number of commodities designated as hazardous materials for transportation purposes and recommendations to limit this growth.

We are deeply concerned that the hazmat transport list, which already numbers between 33,000 and 36,000 commodities, could be increased significantly by recent administrative actions aimed at protecting the nation's waterways. While agreeing with the goals of the Oil Pollution Act of 1990, we strongly believe that we must preserve the original intent of these hazardous materials controls — assuring that the commodities which truly need extra care in their transportation receive it. The recent RSPA edible oils proposal is an example of this expansion. We are glad that in the edible oils case, this subcommittee and the full committee share our concerns about this trend.

The DOT study and report should include, but not be limited to: (1) the health and safety risks posed to people and property by these commodities; (2) the need to develop alternative warning systems for commodities which might be environmentally sensitive but are not considered to be hazardous in transportation; (3) recommendations for implementing such a warning system; and, (4) other recommendations which further the goal of assuring that the hazardous in transportation designation is preserved for those commodities which do pose a significant potential threat to health and safety when being transported.

In conclusion, the National Industrial Transportation League supports H.R. 2178. It is a good bill which will give the Research and Special Programs Administration the tools it needs to carry out its mandates over the next four years. We also ask that it be amended to include the four points we have outlined so that the HMTUSA continues to provide the balanced environment needed to assure that hazardous materials are transported in the safest and most efficient manner possible.

On behalf of the League, I appreciate this opportunity to present the views of the shipper community and looks forward to working with you and your staff on this important issue. I would be happy to answer any questions you may have.

APPENDIX A
DRAFT TECHNICAL AMENDMENTS
1993 HAZMAT REAUTHORIZATION BILL

1. REGISTRATION OF NON-U.S. SHIPPERS

49 USC App. 1805 is amended in subsection (c)(1) by inserting after the words "the following activities" the words "within the United States".

49 USC App. 1805 is amended by striking subsection (c)(8) and inserting in lieu thereof the following:

> "(8) LIMITATIONS ON FILINGS.—A person who carries out more than one activity for which filing of a registration statement is required by or under this subsection only needs to file one registration statement in order to comply with this subsection. In the case of imports into the United States, a person who performs a hazardous material function outside of the United States which results in the introduction into United States commerce of a hazardous material and who otherwise does not perform hazardous materials functions within the United States shall not be required to file a registration statement as required by this subsection."

2. ALLOCATION OF REGISTRATION FUNDS

49 USC App. 1805 is amended by adding at the end of subsection (c)(11) the following:

> "The Secretary biennually is to transmit to Congress a report on the disbursement of registration revenues. This report is to include, but is not limited to, the allocation of funds among the states for training and disbursement of funds by the states for training. If the Department allocates either to itself or to the states registration revenues for other than training purposes, it is to account for that disbursement and the safety benefit(s) to be produced."

3. HMTUSA SECTION 22 RECOMMENDATIONS

49 USC App. 1801-13 is amended by adding at the end of subsection (f) of section 22 of the Hazardous Materials Transportation Uniform Safety Act the following:

> "The Secretary shall, within the latter of one year after date of enactment of this legislation or one year from the completion of the work (including any pilot projects) of the working group referenced in Section 22 of HMTUSA, initiate a rulemaking to establish uniform forms, requirements, and procedures under which States may permit and/or register shippers and carriers of hazardous materials. The final rule resulting from this process shall include provision for a base-state system and shall be promulgated by the Secretary not later than six months from the initiation of the rulemaking process. Thereafter, all states which seek to register or permit shippers and carriers of hazardous materials, including wastes, shall do so only in accordance with the rules promulgated by the Secretary. All participating states shall honor the permits granted by other participating states."

4. PROLIFERATION OF HAZARDOUS MATERIALS DESIGNATIONS

Not later than six months after the effective date of this Act, the Secretary is to transmit to Congress a report on the proliferation of commodities considered to be hazardous in transportation. The report is to include, but is not limited to: (1) the health and safety risks posed to people and property by these newly designated commodities; (2) the need to develop alternative warning systems for commodities which might be environmentally sensitive but are not considered to be hazardous in transportation; (3) recommendations for implementing such a warning system; and, (4) other recommendations which further the goal of assuring that the hazardous in transportation designation is preserved for those commodities which do pose a significant potential threat to health and safety when being transported.

6/1/93

ADDITIONS TO THE RECORD

Edwin L. Harper
President and
Chief Executive Officer

ASSOCIATION
OF AMERICAN
RAILROADS

June 11, 1993

The Honorable Nick J. Rahall II
Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Association of American Railroads (AAR), a trade association whose member railroads operate 76% of the line haul mileage, employ 90% of the workers, and account for 91% of the freight revenues of all railroads in the United States, requests that the following comments be made part of the record of the June 9 hearing on reauthorization of the Hazardous Materials Transportation Act (HMTA).

AAR endorses the legislation you have introduced to reauthorize HMTA, H.R. 2178. The previous legislation reauthorizing HMTA, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. No. 101-615, 104 Stat. 3244, comprehensively revised HMTA. There is no current need to engage in another rewrite of HMTA. Thus, a simple reauthorization bill, such as the one you have proposed, would be appropriate.

AAR is pleased to report on the railroad industry's excellent safety record. Briefly, Federal Railroad Administration (FRA) statistics show that during the ten-year period ending in 1991, the most recent year for which statistics have been published, total train accidents per million train miles have decreased 39 percent, from 8.00 to 4.88. Not only has rail safety in general improved, but hazardous materials transportation by rail also is safer. Combining FRA data on train accidents involving hazardous materials releases with AAR data on the number of hazardous materials shipments, in the 1982-1991 time period the number of train accidents per thousand carloads involving hazardous materials releases decreased 57 percent, from .0089 to .0032. Using Research and Special Programs Administration (RSPA) hazardous materials incident statistics (RSPA incident statistics capture all hazardous materials releases, while FRA accident data encompass only significant train accidents), the number of incidents per thousand carloads in the same ten-year time period decreased 18 percent, from .93 to .76.

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A subject of considerable discussion at the June 9 hearing was the Transportation Research Board's (TRB) recent report, *Hazardous Materials Shipment Information for Emergency Response*. This study was undertaken to fulfill the requirement in section 25 of HMTUSA that there be a study of a

> central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials, that can identify hazardous materials being transported by any mode of transportation, and that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

TRB found that a reporting system and data center such as the one suggested by section 25 of HMTUSA should not be implemented. AAR agrees in particular with TRB's finding that such a system "would not be designed to make maximum use of existing shipper, carrier, and responder capabilities." Buttressing TRB's conclusion that the reporting system and data center should not be pursued is TRB's estimate of the cost of a limited version of the proposed system. TRB estimated that start-up costs would be $300 million, with annual operating costs of $250 million. However, the TRB estimate is for a system that would not satisfy the section 25 requirements because it encompasses only a limited number of hazardous materials shipments. Shipments by air or water were excluded, as were shipments by small and medium-sized trucks. In 1990, then DOT General Counsel Phillip Brady estimated that the cost of a reporting system and data center meeting the section 25 requirements would be $12.3 billion annually.

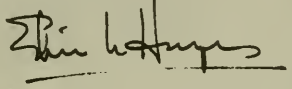
TRB recommended that DOT initiate a pilot program whereby emergency responders would be provided access to a railroad's computerized data system so that emergency responders could obtain information on rail car contents. The Federal Railroad Administration (FRA) has already launched such a pilot program. FRA and the Port Terminal Railroad Association (PTRA) in Houston are jointly funding the "Houston Cooperative Emergency Planning Project." The Project is investigating enhanced cooperation between railroads and emergency responders, including the development of a computer linkage between railroads and emergency responders. PTRA is a good candidate for a hazardous materials emergency response study because it handles more than 300,000 carloads of hazardous materials annually.

Congress and DOT should await the results of the Project before drawing conclusions about the need for providing emergency responders access to carriers' computerized data bases. The Project, which is scheduled to be completed in May 1994, might show that such access is unnecessary. TRB observes that an alternative to providing emergency responders with access to computerized data systems is to provide fire fighters with access to expert railroad employees who have access to

shipment data. Indeed, today emergency responders can communicate as needed with railroad employees that have ready access to shipment data and this system has apparently worked well.

Mr. Chairman, thank you for the opportunity to present the industry's views on reauthorization of HMTA.

Very truly yours,



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